

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

RYAN M. REYNOLDS; JASON WYNN;
CARLTON FLEMING; BEVERAGE CREATIONS,
INC.; BELLATALIA, LP; WYNN INDUSTRIES,
LLC; and THOMAS WADE INVESTMENTS, LLC

Defendants.

Civil Action No. 3:08-CV-0438-G

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S
SUPPLEMENTAL APPENDIX IN SUPPORT OF ITS REPLY
MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR
PRELIMINARY INJUNCTION**

Harold R. Loftin, Jr.
(Texas Bar No. 12487090)
SECURITIES AND EXCHANGE
COMMISSION
Burnett Plaza, Suite 1900
801 Cherry Street, Unit #18
Fort Worth, TX 76102-6882
(817) 978-6450
(817) 978-4927 (fax)

Jonathan S. Polish (IL Id # 6237890)
John E. Birkenheier (IL Id # 6270993)
Tim Leiman (IL Id # 6270153)
Lori Vass (IL Id # 6293998)
SECURITIES AND EXCHANGE
COMMISSION
175 West Jackson Blvd., Suite 900
Chicago, IL 60604
(312) 353-7390
(312) 353-7398 (fax)

Dated: March 31, 2008

Stephen Czarnik 3/27/2008 9:00:00 AM

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF TEXAS
4 DALLAS DIVISION
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

-----X

SECURITIES AND EXCHANGE
COMMISSION,
Plaintiff,
vs. Civil Action No.
3:08-CV-0438-G

RYAN M. REYNOLDS; JASDN WYNN;
CARLTON FLEMING; BEVERAGE
CREATIONS, INC.; BELLATALIA,
LP; WYNN INDUSTRIES, LLC; and
THOMAS WADE INVESTMENTS, LLC
Defendants.
-----X

DEPOSITION OF STEPHEN J. CZARNIK
New York, New York
Thursday, March 27, 2008

Reported by:
JOAN WARNOCK
JOB NO. 202005

1
2 APPEARANCES:
3
4 UNITED STATES SECURITIES AND
5 EXCHANGE COMMISSION
6 Attorneys for Plaintiff
7 175 W. Jackson Blvd., Suite 900
8 Chicago, Illinois 60604
9 BY: LINDA IELEJA GERSTMAN, ESQ.
10
11 ANDREWS KURTH LLP
12 Attorneys for Defendants Ryan Reynolds
13 and Bellatalia, LP
14 1717 Main Street, Suite 3700
15 Dallas, Texas 75201
16 BY: KARA ALTENBAUMER-PRICE, ESQ.
17 (Via telephone)
18
19 PATTON BOGGS
20 Attorneys for Defendants Jason Wynn and
21 Wynn Industries, LLC
22 2001 Ross Avenue, Suite 3000
23 Dallas, Texas 75201
24 BY: CHRIS RICHIE, ESQ.
25 (Via telephone)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

March 27, 2008
10:45 a.m.

Deposition of STEPHEN J. CZARNIK,
held at the offices of Securities and
Exchange Commission, 3 World Financial
Center, New York, New York, before Joan
Warnock, a Notary Public of the State of
New York.

1
2 APPEARANCES: (Cont'd.)
3
4 RANDY HENDERSON, ESQ.
5 Co-Counsel for Defendants Jason Wynn and
6 Wynn Industries, LLC
7 7037 Highway 6 North, #107
8 Houston, Texas 77095
9 (Via telephone)
10
11 BRACEWELL & GIULIANI LLP
12 Attorneys for Carlton Fleming and Thomas
13 Wade Investments, LLC
14 1445 Ross Avenue, Suite 3800
15 Dallas, Texas 75202
16 BY: PATRICK CRAINE, ESQ.
17
18 BEVERAGE CREATIONS
19 1215 Executive Drive West
20 Suite 102
21 Richardson, Texas 75081
22 BY: BOB FORRESTER, ESQ.
23 (Via telephone)
24
25

Stephen Czarnik 3/27/2008 9:00:00 AM

5

7

1
2 APPEARANCES: (Cont'd.)
3
4 DUANE MORRIS LLP
5 Attorneys for the Witness
6 1540 Broadway
7 New York, New York 10036-4086
8 BY: JASON ROSS PICKHOLZ, ESQ.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 S. Czarnik
2 A. 382-86-6142.
3 Q. Your date of birth, please?
4 A. 11/15/67.
5 MS. ALTENBAUMER-PRICE: Before we
6 get started, can we get an agreement
7 that one objection is good for all?
8 MS. GERSTMAN: That's fine.
9 Anybody here have an objection?
10 MR. CRANE: No. That's fine with
11 us.
12 MR. PICKHOLZ: I guess one thing
13 that I would just like to say on the
14 record is I know there is going to be, I
15 assume, some attorney client privilege
16 objections from BCI and perhaps from
17 Fleming. What our intention to do is
18 after each question, we'll pause and
19 wait to hear if one of you guys is going
20 to assert the attorney client privilege
21 for your client. It's not our intention
22 to try to make our own independent
23 decision on that since it does -- the
24 privilege I think does belong to the
25 client. We'll leave it for you guys to

6

8

1 S. Czarnik
2 STEPHEN CZARNIK, called as a
3 witness, having been duly sworn by a
4 Notary Public, was examined and
5 testified as follows:
6 COURT REPORTER: Please state your
7 name and address for the record.
8 THE WITNESS: Stephen Jacob
9 Czarnik, 17 State Street, 36th Floor,
10 New York, New York 10004.
11 MS. GERSTMAN: This deposition is
12 being taken in the case of SEC versus
13 Ryan Reynolds, et al., in the Northern
14 District of Texas pursuant to the
15 Federal Rules of Civil Procedure and the
16 Federal Rules of Evidence. I'm Linda
17 Ieleja Gerstman appearing on behalf of
18 the Commission. I think we have all
19 counsel appearances so we will skip that
20 for now.
21 Q. And, Mr. Czarnik, would you please
22 spell your name.
23 A. Stephen, S-t-e-p-h-e-n, Jacob,
24 J-a-c-o-b, Czarnik, C-z-a-r-n-i-k.
25 Q. And your Social Security number?

1 S. Czarnik
2 work out with the government or with a
3 judge or whatever. But if we don't hear
4 an objection, then obviously we'll make
5 our own judgment call on that as to
6 whether or not we think it's privileged
7 or not and he can go ahead and testify
8 or not. But we will give guys the
9 opportunity to make that objection.
10 MS. GERSTMAN: Also, before we go
11 further, I just wanted to note who is
12 here personally and who is here
13 telephonically, just so we have that on
14 the record. So telephonically it's
15 Mr. Richie, Ms. Altenbaumer-Price,
16 Mr. Henderson, and Mr. Forrester. Here
17 present is Mr. Crane, Mr. Pickholz, and
18 myself.
19 Would you mark that, please, as
20 Exhibit 6.
21 (Plaintiff's Exhibit 6, Subpoena,
22 marked for identification, as of this
23 date.)
24 Q. Mr. Czarnik, you've been given what
25 has been marked as Exhibit 6. Is this the

Stephen Czarnik 3/27/2008 9:00:00 AM

9

1 S. Czarnik
 2 subpoena pursuant to which you are appearing
 3 today? And, actually, as a preface to that
 4 question --
 5 MR. PICKHOLZ: Just get the
 6 clarification.
 7 Q. Yes, I will clarify. This is the
 8 original subpoena that was sent out to you on
 9 or about March 17th, 2008. An amended
 10 subpoena was sent out to you that was
 11 designed only to change the date to
 12 correspond to a date that you were available.
 13 So the only intended change was to change it
 14 to today, March 27th, at 10:30. The amended
 15 subpoena, however, did have a different
 16 attachment. I've spoken to your counsel
 17 about it, and I think we are all in agreement
 18 that this is the subpoena that the Commission
 19 intends to be operative and with the change
 20 of today's date and time.
 21 MR. PICKHOLZ: Right. That was our
 22 understanding.
 23 MS. GERSTMAN: Okay.
 24 Q. So is this the subpoena, with that
 25 caveat, that you're appearing pursuant to?

10

1 S. Czarnik
 2 A. Yes.
 3 Q. And if you would look at the
 4 documents requested, please, on Page 3. Did
 5 you produce all documents called for by the
 6 subpoena?
 7 A. I believe I did.
 8 MR. PICKHOLZ: I just want to make
 9 a caveat. I don't remember if I spoke
 10 to you or one of your colleagues, and I
 11 mentioned that we hadn't produced
 12 anything in response to number four, and
 13 I was told that we could discuss that
 14 either today or at some other point if
 15 you still wanted the information.
 16 MS. GERSTMAN: Okay.
 17 Q. So then with the exception of
 18 number four, you've produced all other
 19 responsive documents in your possession?
 20 A. I produced everything that -- I
 21 mean there may be emails or things that I
 22 haven't had a chance to go through in the
 23 limited time, but I produced all the
 24 documents that I had.
 25 Q. Did you have a chance to look at

11

1 S. Czarnik
 2 your email?
 3 A. No.
 4 Q. And is it possible that you have
 5 emails that are responsive to the document
 6 request here?
 7 A. There may be.
 8 Q. And what was the reason that you
 9 didn't look at your emails?
 10 A. I just didn't have the time.
 11 MS. GERSTMAN: Mr. Pickholz, we'll
 12 ask that that be done.
 13 Q. Are there any other categories --
 14 MR. PICKHOLZ: I just want to point
 15 out that this is dated March 17th, and I
 16 think we got it last week, so there
 17 hasn't really been a lot of time, but we
 18 will certainly review the emails and let
 19 you know if we find anything.
 20 MS. GERSTMAN: Okay.
 21 Q. Are there any other categories of
 22 documents like the emails that you haven't
 23 had a chance to look at?
 24 A. No.
 25 Q. And have you withheld any documents

12

1 S. Czarnik
 2 that are responsive to this request on the
 3 basis of attorney client privilege?
 4 A. I don't believe that I have.
 5 MS. GERSTMAN: Could you mark this,
 6 please as Exhibit 7.
 7 (Plaintiff's Exhibit 7, Letter
 8 dated March 25, 2008, to Jason Pickholz
 9 from Stanley Morris, marked for
 10 identification, as of this date.)
 11 Q. Mr. Czarnik, I've handed you what
 12 has been marked as Exhibit 7. Do you
 13 recognize this document?
 14 A. Yes.
 15 Q. Can you identify it for the record,
 16 please?
 17 A. It's a letter that was sent to me,
 18 or it's addressed to Mr. Pickholz from Stan
 19 Morris.
 20 MS. GERSTMAN: Can you folks on the
 21 phone silence that in any way? Thank
 22 you.
 23 Q. Go ahead, Mr. Czarnik.
 24 A. It's a letter from Mr. Morris.
 25 Q. To Mr. Pickholz?

Stephen Czarnik 3/27/2008 9:00:00 AM

13

1 S. Czarnik
 2 A. Yes.
 3 Q. And is it your understanding that
 4 this sets forth the parameters of a waiver by
 5 Beverage Creations, Inc., with respect to
 6 your testimony here today?
 7 A. Yes, that's my understanding.
 8 Q. And are you testifying today in
 9 accordance with the scope of the waiver set
 10 forth herein? Is your intention to?
 11 A. Yes.
 12 Q. A little bit about your education,
 13 please. Your college attendance and degree?
 14 A. I went to the University of Detroit
 15 and got a bachelor's. And then I went to law
 16 school at University of Detroit, and I have a
 17 LL.M. in taxation in Boston University.
 18 Q. What year was your bachelor's from
 19 the University of Detroit?
 20 A. '89.
 21 Q. And your law school degree?
 22 A. '92.
 23 Q. And your LL.M?
 24 A. '83.
 25 Q. Do you have any other post-college

14

1 S. Czarnik
 2 education?
 3 A. No.
 4 Q. And the bars that you are admitted
 5 to, could you tell us that?
 6 A. New York.
 7 Q. What year was that?
 8 A. I'm not sure if it was '93 or '94,
 9 because I think technically you don't -- you
 10 have to get sworn in, but I passed the bar
 11 after law school, '92.
 12 Q. Are you admitted to any other bars?
 13 A. I was admitted to Illinois, but I
 14 let that lapse because I never did any -- had
 15 any affiliation or work in Illinois.
 16 Q. Are you admitted to practice law in
 17 Texas?
 18 A. No.
 19 MR. PICKHOLZ: Were you referring
 20 to federal bars as well or just ones
 21 that he had to pass the bar exam for?
 22 MS. GERSTMAN: Well, not just ones
 23 he had to pass a bar exam for, because
 24 some states have reciprocity or will
 25 waive you in, but I guess the Supreme

15

1 S. Czarnik
 2 Court or the -- yeah, the Supreme Court,
 3 the states, not federal bars.
 4 MR. PICKHOLZ: Okay. You
 5 understood that?
 6 THE WITNESS: Yeah, I understood.
 7 A. New York.
 8 Q. Have any disciplinary charges ever
 9 been alleged against you?
 10 A. No, not that I'm aware of.
 11 Q. And if you could briefly describe
 12 your job experience as a lawyer.
 13 A. Employment history?
 14 Q. Yes.
 15 A. I was an associate at a firm called
 16 Giancarlo & Gileberman in New York. And
 17 after that that firm merged into a firm
 18 called Brown Ralsman Milstein Felder &
 19 Steiner, where I was an associate. And then
 20 I left there to join Baer Marks & Upham in
 21 New York, and I became a partner there. And
 22 then I left Baer Marks and started -- well,
 23 actually, I left Baer Marks with a colleague
 24 and we went to Rosen, Einbinder & Dunn. And
 25 then we ended up on our own, Cohen & Czarnik.

16

1 S. Czarnik
 2 Q. When did you start Cohen & Czarnik?
 3 A. I believe it was '93. It may have
 4 been '94.
 5 Q. And how many lawyers are with you
 6 currently at Cohen & Czarnik?
 7 A. Two.
 8 Q. Yourself and your partner,
 9 Mr. Cohen?
 10 A. Yes.
 11 Q. And could you describe your
 12 practice at Cohen & Czarnik, please?
 13 A. We do general corporate practice
 14 with some securities as well as, you know,
 15 general merger and acquisition, a small
 16 corporate shop.
 17 MR. PICKHOLZ: Did you say '93 for
 18 the year you formed the firm, your own
 19 firm?
 20 THE WITNESS: I said I think it was
 21 '93, '93 or '94. I'm sorry. You're
 22 right. It's 2003 or 2004.
 23 MR. PICKHOLZ: Relax.
 24 THE WITNESS: Yeah. I'm just
 25 living in the past.

Stephen Czarnik 3/27/2008 9:00:00 AM

17

1 S. Czarnik
 2 Q. Have you and Mr. Cohen been the
 3 only partners there the whole time the firm
 4 has been in place?
 5 A. Yes.
 6 Q. Could you describe your securities
 7 law experience, please.
 8 A. Sure. I worked on securities
 9 matters for Brown Raisman as well as Baer
 10 Marks throughout representing generally
 11 reporting companies.
 12 Q. And more specifically, how about
 13 your experience in Regulation D offerings?
 14 A. Regulation D offerings, sure,
 15 throughout, throughout Brown Raisman and Baer
 16 Marks and now.
 17 Q. And how about experience
 18 particularly in offerings pursuant to
 19 Rule 504 of Regulation D, what is your
 20 familiarity and experience there?
 21 A. Within the past few years.
 22 Q. Can you be more specific? How many
 23 past years?
 24 A. Probably I would say two.
 25 Q. So prior to that you had no

18

1 S. Czarnik
 2 experience in 504 offerings?
 3 A. Limited.
 4 Q. And so in the past two years
 5 approximately how many have you been involved
 6 in?
 7 A. How many 504 offerings?
 8 Q. Yes.
 9 A. I don't know.
 10 Q. Can you ballpark it?
 11 A. A number of them.
 12 Q. More than ten?
 13 A. More than ten.
 14 Q. More than 20?
 15 A. More than 20.
 16 Q. More than 50?
 17 A. I don't know.
 18 Q. And in connection with those
 19 offerings, who is it that you represent? Is
 20 it the company or different participants?
 21 A. It would be different participants.
 22 It depends on who I represent, who retained
 23 me or who I'm working for, who I have the
 24 relationship with.
 25 Q. Right. So your representation

19

1 S. Czarnik
 2 isn't limited strictly to the companies who
 3 are doing the offering?
 4 A. No.
 5 Q. Approximately how many opinion
 6 letters have you issued within the last two
 7 years based upon the exemption of Rule 504?
 8 A. I think I just answered that
 9 question that I'm not -- ballpark was 50, and
 10 I said I can't be sure.
 11 Q. I'm asking more specifically about
 12 opinion letters, and it may be the same
 13 answer.
 14 A. It would be the same answer.
 15 Q. And how many of those relied on
 16 Texas law?
 17 A. I can't be sure.
 18 Q. Do you have a ballpark estimate?
 19 A. I can estimate -- I couldn't. On a
 20 percentage basis I couldn't even estimate.
 21 Q. Now, is Beverage Creations a client
 22 of yours?
 23 A. Yes.
 24 Q. Since when?
 25 A. Since probably July of 2007.

20

1 S. Czarnik
 2 Q. And is Beverage Creations a current
 3 client of yours?
 4 A. I don't know how to answer that. I
 5 mean I don't know when a client relationship
 6 ends.
 7 Q. Okay. Has either side informed the
 8 other that the client relationship has ended,
 9 you've told that to BCI or they've told that
 10 to you?
 11 A. No.
 12 Q. And how was it that BCI became a
 13 client of yours?
 14 A. I was introduced to them through
 15 Robert Feeback and Carl Fleming.
 16 Q. Who is Robert Feeback?
 17 A. Robert Feeback, he's a member of
 18 the board, I believe, of Beverage Creations.
 19 Q. And how did you know Robert
 20 Feeback?
 21 A. I knew him -- he has a firm in
 22 Texas. I don't know if it's an investment
 23 advisory firm or what kind of firm it is.
 24 But he consults with public -- not-public,
 25 but private companies.

Stephen Czarnik 3/27/2008 9:00:00 AM

21

1 S. Czarnik
 2 Q. And how did you first make his
 3 acquaintance?
 4 A. I imagine it was probably last
 5 year. A year ago around this time, maybe
 6 less, just less than a year ago.
 7 Q. And what were the circumstances of
 8 your meeting?
 9 A. Well, I never met with him
 10 personally.
 11 Q. To this day you've never met him?
 12 A. No.
 13 Q. So how was it that you became
 14 introduced to him?
 15 A. I believe he and Carl called me, or
 16 I mean I can't -- I can't recall how it
 17 actually happened, but someone reached out to
 18 me.
 19 Q. And was that with respect to
 20 retaining your services as an attorney?
 21 A. Yes.
 22 Q. And was that for a client other
 23 than Beverage Creations?
 24 A. Yes.
 25 Q. And you mentioned Carl Fleming.

22

1 S. Czarnik
 2 How do you know him?
 3 A. I know Carl -- I think it was about
 4 two years ago or maybe three years ago he was
 5 introduced to me by someone else that I had
 6 worked with.
 7 Q. Who is that?
 8 A. Scott Seik.
 9 Q. And what do you understand
 10 Mr. Fleming's business to be?
 11 A. I understand Mr. Fleming's business
 12 to be a number of things. I know he's
 13 involved in real estate. I know he owns a
 14 farm. And I'm not -- he's an investor, and
 15 I'm not sure what else there is.
 16 Q. How is it that you came to be
 17 introduced to him by Mr. Seik?
 18 A. I was working with Mr. Seik on a
 19 publicly reporting shell that was delinquent
 20 that we were trying to make current. And
 21 Mr. Fleming was the sole officer and director
 22 of that company at the time. So we needed
 23 his assistance with records.
 24 Q. Is Mr. Fleming a client of yours?
 25 A. Yes.

23

1 S. Czarnik
 2 MR. CRAINE: And just to make your
 3 job easier, we have not provided a
 4 letter like this waiving privilege all
 5 over the place. So if we're going to
 6 assert privilege anywhere and
 7 everywhere, I'm sure you'll be
 8 respectful of that.
 9 MS. GERSTMAN: I'll ask my
 10 questions and you'll make your
 11 objections.
 12 Q. When did Mr. Fleming become a
 13 client of yours?
 14 A. Probably about a year ago.
 15 Q. Is Mr. Fleming a current client of
 16 yours?
 17 A. I don't know when -- I'm not sure
 18 when a relationship ends except unless
 19 someone tells the other, but no one has told
 20 the other that, so...
 21 Q. Any entities with which Mr. Fleming
 22 is involved, are any of those entities your
 23 clients?
 24 A. My understanding would be no.
 25 Q. Do you have an engagement letter

24

1 S. Czarnik
 2 with Mr. Fleming?
 3 A. No.
 4 Q. Do you have an engagement letter
 5 with BCI?
 6 A. No.
 7 Q. When I say BCI, do you understand
 8 me to be talking about Beverage Creations?
 9 A. Right.
 10 Q. What were you retained to do for
 11 BCI?
 12 A. I was retained to purchase a shell,
 13 do a share exchange between the private
 14 company and the shell, and then the offering.
 15 Q. And who was your primary contact at
 16 BCI?
 17 A. I spoke mostly with Robert Feedback,
 18 but I often spoke with Patrick Dado or Bob
 19 Wieden.
 20 Q. How do you charge BCI for your
 21 time?
 22 A. Well, it was a flat fee.
 23 Q. What was the amount of the fee?
 24 A. \$10,000.
 25 Q. And that's for the three steps that

Stephen Czarnik 3/27/2008 9:00:00 AM

25

1 S. Czarnik
 2 you described, purchasing the shell, doing
 3 the share exchange, and doing the offering?
 4 MR. PICKHOLZ: Bob, I know he
 5 answered the first question, are you
 6 going to object at all to the questions
 7 and answers about the fees, or are you
 8 okay with that?
 9 MR. FORRESTER: We're okay with
 10 that.
 11 MR. PICKHOLZ: Okay. Go ahead and
 12 answer.
 13 Q. And have you been paid the flat fee
 14 of \$10,000?
 15 A. Yes?
 16 Q. Who paid that?
 17 A. Carl Fleming. Or one of his
 18 companies. I don't...
 19 Q. Do you have any evidence of that
 20 payment?
 21 A. I don't know. If it came in by
 22 wire, I do. But if it didn't, I wouldn't.
 23 MS. GERSTMAN: Mr. Pickholz, we'll
 24 ask you to see if you can find any
 25 documents related to that payment.

26

1 S. Czarnik
 2 please.
 3 MR. PICKHOLZ: Can I ask you, just
 4 to make sure we don't miss anything when
 5 this is over, can you just send us a
 6 letter just to recap what it is that
 7 you're looking for.
 8 MS. GERSTMAN: Yes.
 9 Q. Have you ever received any BCI
 10 stock in exchange for your services?
 11 A. No.
 12 Q. Have you ever owned any BCI stock?
 13 A. No.
 14 Q. What was the purpose of BCI's stock
 15 offering?
 16 A. Which -- I'm not sure what you're
 17 referring to.
 18 Q. The offering that you referred to,
 19 the one that --
 20 A. Oh, the offering.
 21 Q. -- was in December 2007.
 22 A. Oh.
 23 Q. Yes. What was BCI -- what was the
 24 purpose there of what it was doing?
 25 A. I believe their purpose was to

27

1 S. Czarnik
 2 raise funds for working capital.
 3 Q. And whose idea was it to make the
 4 offering pursuant to Section 504 and the
 5 specific Texas administrative code
 6 provisions?
 7 MR. PICKHOLZ: Bob, by your silence
 8 does that mean that you don't have any
 9 objection?
 10 MR. FORRESTER: No.
 11 MR. PICKHOLZ: Okay.
 12 A. I don't recall who exactly
 13 structured the transaction.
 14 Q. Was it your idea?
 15 A. No.
 16 Q. So it came to you already
 17 structured as a Section 504 exemption?
 18 A. Yeah. It came to me this is how
 19 the deal is going to be, sure, yes.
 20 Q. And who presented it to you that
 21 way?
 22 A. It was probably Mr. Fleming and/or
 23 Mr. Feedback.
 24 Q. What is your understanding of
 25 Mr. Fleming's relationship to BCI?

28

1 S. Czarnik
 2 A. I don't know what their
 3 relationship -- I mean I know they know each
 4 other. I believe that they've met in person.
 5 Q. Well, particularly at the time when
 6 this offering is being discussed, and if it
 7 was Mr. Fleming that presented it to you, and
 8 I know you said it was either Mr. Fleming or
 9 Mr. Feedback, so how is it that Mr. Fleming is
 10 presenting to you how BCI is going to do its
 11 offering? Like what is the relationship of
 12 Mr. Fleming that he is making these
 13 representations to you?
 14 MR. CRAINE: And I'll object to the
 15 question to the extent that it
 16 mischaracterizes your previous answer.
 17 A. I don't -- I don't understand what
 18 you're asking me. I'm sorry.
 19 Q. Okay. Let me try it this way.
 20 MS. GERSTMAN: We'll strike the
 21 last question.
 22 Q. At this time, the time of the
 23 offering, what do you understand
 24 Mr. Fleming's relationship to be to BCI?
 25 MR. PICKHOLZ: Just be careful on

Stephen Czarnik 3/27/2008 9:00:00 AM

29

1 S. Czarnik
 2 that. Objectively, you can answer it
 3 if you learned of the nature of the
 4 relationship through your attorney
 5 client relationship with BCI, then we
 6 should probably check with Bob and make
 7 sure that that's okay first. So
 8 depending on what your answer is
 9 A. I knew him to be -- well, I know he
 10 was an investor and I understood they went --
 11 they've been to dinner and meetings and
 12 things together
 13 Q. Do you know how the individuals at
 14 BCI met Mr. Fleming?
 15 A. I don't.
 16 Q. How about Mr. Feedback, how BCI came
 17 into contact with Mr. Feedback?
 18 A. I don't.
 19 MR. PICKHOLZ: For these types of
 20 questions I'll give you the same
 21 instruction. Just give me a chance
 22 to --
 23 THE WITNESS: I'm sorry
 24 MS. GERSTMAN: Would you mark this,
 25 please, as Exhibit 8.

30

1 S. Czarnik
 2 (Plaintiff's Exhibit 8, Convertible
 3 Note bearing production number SJC
 4 00033-39, marked for identification, as
 5 of this date.)
 6 MS. GERSTMAN: And one more,
 7 please, as Exhibit 9.
 8 (Plaintiff's Exhibit 9, Convertible
 9 Note bearing production number SJC
 10 00040-46, marked for identification, as
 11 of this date.)
 12 Q. Mr. Czarnik, I've handed you two
 13 exhibits. I've marked them Exhibit 8 and
 14 Exhibit 9. Looking at Exhibit 8, have you
 15 seen that before?
 16 A. Yes.
 17 MR. PICKHOLZ: Just for the record,
 18 I'll represent that the Bates number
 19 with the SJC prefix looks like the Bates
 20 number prefixes that we used in
 21 producing.
 22 Q. And can you identify this document
 23 for the record?
 24 A. It's a convertible note where the
 25 maker is Beverage Creations. The holder is

31

1 S. Czarnik
 2 Thomas Wade Investments.
 3 Q. And the date is July 25th, 2007?
 4 A. That's correct.
 5 Q. For \$75,000?
 6 A. Yes.
 7 Q. Did you participate in creating
 8 this document?
 9 A. Yes.
 10 Q. When was it created?
 11 A. I don't recall, but it presumably
 12 was created about the date of the note.
 13 Q. And just to be more specific, did
 14 you draft this document?
 15 A. Yes.
 16 Q. Where did you get the information,
 17 the terms that you put into this document?
 18 A. I don't understand.
 19 Q. What was the source of the
 20 information that you put in here?
 21 MR. PICKHOLZ: I'm sorry. I don't
 22 mean to be a pest in delaying this, Bob,
 23 but I just need to be careful for
 24 Mr. Czarnik. As I read it, this would
 25 fall under either one or two in Stan's

32

1 S. Czarnik
 2 letter to me. Are you guys objecting to
 3 it, or is it okay for him to testify?
 4 MR. FORRESTER: It's okay for him
 5 to testify.
 6 MR. PICKHOLZ: Okay. Thanks.
 7 Q. So who gave you the information to
 8 put it into this note?
 9 A. Either Mr. Fleming or Mr. Feedback
 10 or someone else from the company.
 11 Q. So by your answer is it fair to say
 12 you don't recall specifically?
 13 A. Yeah.
 14 MR. CRAINE: I appreciate that.
 15 Thank you.
 16 A. I'm sorry. I don't recall who
 17 specifically gave me the terms of this
 18 note.
 19 Q. And what was the purpose of this
 20 note?
 21 A. It was to evidence a debt.
 22 Q. BCI was looking for funding, for
 23 money at the time?
 24 A. That was my understanding.
 25 Q. Do you know what BCI intended to do
 with the \$75,000?

Stephen Czarnik 3/27/2008 9:00:00 AM

33

1 S. Czarnik
 2 A. I'm not sure what they intended to
 3 do with this particular \$75,000.
 4 Q. Do you know what they did with this
 5 money?
 6 A. No.
 7 Q. And just to be clear, if says for
 8 value received. Is the value received
 9 \$75,000?
 10 MR. PICKHOLZ: Objection. Do you
 11 mean does he know?
 12 MS. GERSTMAN: I can rephrase it.
 13 Q. Did Beverage Creations, Inc., get
 14 \$75,000 in exchange for this note?
 15 A. I don't know.
 16 Q. If you would look at paragraph two,
 17 please, titled "Conversion of Notes" at the
 18 bottom of Page 1. Read it, let me know, you
 19 can read it to yourself, and I'll ask you a
 20 question about it.
 21 A. Okay.
 22 Q. It references here that the company
 23 will enter into an agreement with another
 24 company which has shares traded on the Pink
 25 Sheets electronic quotation system. Is this

34

1 S. Czarnik
 2 the purchasing of the shell and the share
 3 exchange that you referenced in your earlier
 4 answer?
 5 A. That would be, yes.
 6 Q. And what is the name of the company
 7 here that's involved?
 8 MR. PICKHOLZ: Objection. There's
 9 a bunch of companies --
 10 Q. I'm sorry. The company traded on
 11 the Pink Sheets?
 12 A. What the name of it is?
 13 Q. Yes.
 14 A. Now?
 15 Q. Then.
 16 MR. PICKHOLZ: Yeah, I guess that's
 17 my other objection. Do you mean when --
 18 MS. GERSTMAN: I can withdraw it.
 19 Q. The agreement and transaction
 20 referenced in paragraph two, is that the
 21 subsequent stock purchase agreement that was
 22 entered into between BCI and Belmont Partners
 23 for the shares of Granite Golf Group?
 24 A. Yes.
 25 Q. To ask it a little more

35

1 S. Czarnik
 2 specifically, then, do you know whether the
 3 proceeds of this note were used for that
 4 transaction as set forth on the top of
 5 Page 2?
 6 A. My understanding was that there are
 7 two notes in July and two notes in August.
 8 And I'm not sure which went for what. But my
 9 understanding was that \$50,000 went to
 10 purchase the shell directly from BC --
 11 Beverage Creations and then Carl Fleming paid
 12 for the 150.
 13 Q. I'm sorry. Carl Fleming paid for
 14 the 150. What is that in reference to?
 15 A. I mean Carl or someone -- these
 16 notes represent as well part of that, the
 17 remaining 150 that needed to be paid for the
 18 shell.
 19 Q. What was the shell price?
 20 A. 200.
 21 Q. And the two notes, then, the other
 22 note you were referring to is what I've
 23 marked as Exhibit 9. Let's go ahead and
 24 identify that for the record, if we could.
 25 A. This is a note dated July 25th.

36

1 S. Czarnik
 2 2007, between Beverage Creations as the maker
 3 and Ballatalia as the holder.
 4 Q. Again, for \$75,000?
 5 A. That's correct.
 6 Q. July 25th, 2007?
 7 A. That's correct.
 8 Q. And are these notes identical save
 9 for the different holders?
 10 A. I think so.
 11 Q. And you drafted Exhibit 9 as well?
 12 A. Yes.
 13 Q. So if I understand your testimony,
 14 this was \$150,000 coming into the company,
 15 50,000 of that went to Belmont for the shell?
 16 A. Well, no, because there's two
 17 different sets of notes. I think they each
 18 total 150, so I'm not sure if 50 -- which was
 19 for the shell purchase and which went to the
 20 company.
 21 Q. Now, are you referring to the
 22 August 1st, 2007, notes?
 23 A. I'm not sure of the date, but yes,
 24 the other notes.
 25 MS. GERSTMAN: Please mark this as

Stephen Czarnik 3/27/2008 9:00:00 AM

37

1 S. Czarnik
 2 Exhibit 10.
 3 (Plaintiff's Exhibit 10,
 4 Convertible Note bearing production
 5 number SJC 00047-53, marked for
 6 identification, as of this date.)
 7 MR. PICKHOLZ: Just as long as
 8 we're marking documents, just to keep it
 9 clear on the record, these notes that
 10 we're asking about, these four
 11 documents, the notes, my reading is that
 12 it falls within the letter that Stan
 13 sent with the attorney client privilege
 14 waiver. I just want to make sure if
 15 you're going to make an attorney client
 16 objection or not to the line of
 17 questioning related to them.
 18 MR. FORRESTER: I will not.
 19 MS. GERSTMAN: And Exhibit 11,
 20 please.
 21 (Plaintiff's Exhibit 11,
 22 Convertible Note bearing production
 23 number SJC 00054-61, marked for
 24 identification, as of this date.)
 25 Q. Mr. Czarnik, once you've had a

38

1 S. Czarnik
 2 chance to look at those, if you could
 3 identify Exhibits 10 and 11 for the record,
 4 please.
 5 A. Ten is a convertible note made by
 6 Beverage Creations in favor of Thomas Wade
 7 Investments dated August 1st, 2007.
 8 Q. For \$75,000?
 9 A. Yes.
 10 Q. And Exhibit 11?
 11 A. Exhibit 11 is a note in favor of --
 12 I'm sorry, made by Beverage Creations in
 13 favor of Bellatalia for \$75,000.
 14 Q. Did you draft each of Exhibit 10
 15 and 11?
 16 A. Yes.
 17 Q. And did you draft it on or around
 18 the date it bears?
 19 A. That would be my practice, yes.
 20 Q. And did another \$150,000 come into
 21 Beverage Creations then as a result of these
 22 notes?
 23 A. As I mentioned earlier, I'm not
 24 sure which -- what notes, the August 1st
 25 notes or the July 25th notes, which went to

39

1 S. Czarnik
 2 the company and which went to Belmont to pay
 3 for the shell. And I'm not sure if -- they
 4 may have both went to Belmont and they paid
 5 for the shell or -- do you know what I mean.
 6 I don't know.
 7 Q. So these notes reflect an influx of
 8 \$300,000 to BCI. Is it your understanding
 9 that 200,000 paid for the shell and a hundred
 10 thousand went to the company, regardless of
 11 which note it's attributable to?
 12 A. Yes.
 13 Q. Now, with respect to the July 25th
 14 notes that's Exhibit 8 and Exhibit 9, were
 15 these notes converted?
 16 A. I think the August 1st notes were
 17 converted.
 18 Q. So what is the status of these
 19 July 25th notes?
 20 A. My understanding is they're not
 21 converted.
 22 Q. So there has been no demand, they
 23 have not reached maturity?
 24 A. There has been no demand, to my
 25 understanding.

40

1 S. Czarnik
 2 Q. So do these reflect current
 3 obligations of BCI?
 4 A. Yes.
 5 MR. PICKHOLZ: Wait.
 6 A. Let me say yes, to my understanding
 7 it's current obligations, but they may have
 8 been paid or there may have been some other
 9 arrangements with the holders.
 10 Q. Looking at the second set of notes,
 11 the August 1st notes, which is Exhibit 10 and
 12 Exhibit 11, how did those notes come about?
 13 A. I don't understand.
 14 Q. What were the circumstances around
 15 your drafting these notes? What did BCI tell
 16 you?
 17 A. Someone gave me the terms of the
 18 note.
 19 Q. Did you understand that BCI needed
 20 cash for something specific?
 21 A. My understanding was that they were
 22 -- they have some technology with respect to
 23 beverages that they were trying to move
 24 forward.
 25 Q. Now, these notes, again, if you

Stephen Czarnik 3/27/2008 9:00:00 AM

41

1 S. Czarnik
 2 look at the bottom of Page 1 and the top of
 3 Page 2, these notes also indicate that the
 4 proceeds of this note are to be used for the
 5 transaction with the public company. Was
 6 that done, to your knowledge?
 7 A. I don't understand what -- I don't
 8 believe that it says that.
 9 Q. I'm looking at language on
 10 Exhibit 10, top of Page 2, and I'm quoting,
 11 "The proceeds of this note are to be used for
 12 the transaction with the public company."
 13 A. That's correct. It does say that.
 14 Q. And was that done, to the best of
 15 your knowledge?
 16 A. I don't know.
 17 Q. So, again, somebody came to you
 18 with these terms and you were a scribe and
 19 put them down on paper to reflect the
 20 parties' agreement; is that correct?
 21 A. I drafted the documents, yes.
 22 Q. And based on the terms that were
 23 given to you?
 24 A. That's correct.
 25 Q. And with respect to these notes, do

42

1 S. Czarnik
 2 you recall who it was that gave you the
 3 terms?
 4 A. No, I can't recall who gave me the
 5 terms.
 6 Q. Are the possibilities, again,
 7 Mr. Fleming, Mr. Feedback, Mr. --
 8 A. Dado.
 9 Q. Dado or Mr. Wieden?
 10 A. Mr. Wieden. Um-hmm.
 11 Q. That's the full pod of
 12 possibilities?
 13 A. That's correct.
 14 Q. Were these notes converted?
 15 A. I'm not sure. Two of the four
 16 notes were converted. I'm not sure of what's
 17 in front of me which two.
 18 Q. And what were the circumstances of
 19 the two notes being converted, as you knew
 20 them?
 21 A. I was told that they were being
 22 converted.
 23 Q. Who told you that?
 24 A. I'm not sure if it was Mr. Fleming
 25 or Mr. Feedback.

43

1 S. Czarnik
 2 Q. Were you told why they were being
 3 converted?
 4 A. No.
 5 Q. When were you told that they were
 6 being converted?
 7 A. Probably shortly before the time
 8 that they were converted.
 9 Q. If you would look at Exhibit 11,
 10 please, the last page. Was this page part of
 11 the original note?
 12 A. I'm not certain.
 13 Q. Was this page added at the time
 14 that the note was converted?
 15 A. I think it's a separate document,
 16 but I believe that a blank conversion notice
 17 is maybe attached, but it has no information
 18 on it.
 19 Q. Okay. This is the way it was
 20 produced to me by your office by
 21 Mr. Pickholz. I'll represent that to you.
 22 Can you tell me what is reflected on this
 23 Page 8?
 24 A. That this note was converted.
 25 Q. On what date?

44

1 S. Czarnik
 2 A. 12/17/07.
 3 Q. And is that the date on which it
 4 was actually converted?
 5 A. Yes.
 6 Q. And it indicates a conversion
 7 amount of 75,000 and a conversion price. Do
 8 you know how that price was determined?
 9 A. I believe it was set forth in the
 10 note.
 11 Q. And then your understanding is that
 12 conversion results in five million shares to
 13 be issued?
 14 A. That's correct.
 15 Q. Who advised you of the assignment
 16 that's reflected in the second paragraph at
 17 the top where the holder, who in this case is
 18 Bellatelia, is assigning 25,000 of the note
 19 to Wynn Industries?
 20 A. Mr. Fleming.
 21 Q. What is Mr. Fleming's relationship
 22 to Bellatelia?
 23 A. I don't know.
 24 Q. Did you have any role in getting
 25 this executed by Mr. Reynolds?

Stephen Czamik 3/27/2008 9:00:00 AM

45

1 S. Czamik
 2 A. No.
 3 Q. Who did that?
 4 A. I don't know.
 5 Q. Have you seen a conversion
 6 confirmation from the company with respect to
 7 this conversion?
 8 A. A conversion confirmation? What is
 9 that?
 10 Q. Okay. I'll direct your attention
 11 to paragraph two, 2(E), sub(2), there is a
 12 reference there to conversion confirmation.
 13 A. Um-hmm.
 14 Q. Have you seen one from the company
 15 with respect to conversion of this note that
 16 we've marked as Exhibit - I'm sorry. Which
 17 one are we looking at? We're looking at 11.
 18 A. I would just have to say that I
 19 would take the conversion confirmation to be
 20 the executed subscription agreement, which
 21 were also executed in connection with the
 22 conversion.
 23 Q. Those are executed the same day as
 24 the conversion on 12/17?
 25 A. On or about 12/17.

46

1 S. Czamik
 2 Q. And do you know did BCI issue
 3 3,333,333 shares of common stock to
 4 Bellatelia?
 5 A. Yes.
 6 Q. And did BCI issue 1,666,667 shares
 7 of common stock to Wynn Industries?
 8 A. Let me go back to your last
 9 question. That's my understanding that those
 10 were issued, but I don't have confirmation
 11 that they were ever issued.
 12 Q. Were the shares that were issued in
 13 connection with this conversion notice, were
 14 those shares restricted?
 15 A. No.
 16 Q. They were unrestricted, then?
 17 A. Correct.
 18 Q. And do you know what the basis was
 19 for not having those shares be restricted?
 20 A. Rule 504(B).
 21 MR. PICKHOLZ: Again, Bob, just to
 22 make sure we're extra careful on the
 23 record here, I think this still falls
 24 within the letter from Stan, but I just
 25 want to make sure whether you guys are

47

1 S. Czamik
 2 going to have attorney client objections
 3 to this line of questioning.
 4 MR. FORRESTER: We will not.
 5 MR. PICKHOLZ: Okay. Thanks.
 6 MS. GERSTMAN: If you could mark
 7 that, please, as Exhibit 12.
 8 (Plaintiff's Exhibit 12, Conversion
 9 Notice bearing production number SJC
 10 00083-89, marked for identification, as
 11 of this date.)
 12 Q. Mr. Czamik, have you had a chance
 13 to look at Exhibit 12?
 14 A. Yes.
 15 Q. And this is how I believe it was
 16 produced to me by your office. If I've
 17 appended the top page to something that
 18 doesn't belong to it - I mean do you believe
 19 this top page is a document standing on its
 20 own, or does it belong --
 21 A. I mean it's probably a document
 22 standing on its own, but it's definitely
 23 related to the subscription agreement.
 24 Q. Can you identify this first page
 25 for me, please.

48

1 S. Czamik
 2 A. It's a conversion notice dated
 3 12/17/07.
 4 Q. And like the last one we looked at,
 5 this converts the note to shares of stock?
 6 A. Yes.
 7 Q. And who advised you of the holder's
 8 assignment of 25,000 to Wynn Industries?
 9 A. Carl Fleming.
 10 Q. And is it your understanding that
 11 pursuant to the conversion, BCI issued
 12 3,333,333 shares of stock to Thomas Wade
 13 Investments?
 14 A. I believe that they had been, but I
 15 have no confirmation.
 16 Q. And same thing for the amount shown
 17 to Wynn Industries, 1,666,667 shares?
 18 A. That's correct.
 19 Q. And were those shares unrestricted?
 20 A. Correct.
 21 MS. GERSTMAN: If you could mark
 22 that, please, as Exhibit 13.
 23 (Plaintiff's Exhibit 13,
 24 Convertible Note bearing production
 25 number SJC 00062-68, marked for

Stephen Czarnik 3/27/2008 9:00:00 AM

49

1 S. Czarnik
 2 Identification, as of (this date.)
 3 Q. Have you seen Exhibit 13 before?
 4 A. Yes.
 5 Q. Can you identify it, please?
 6 A. It's a note dated December 7th,
 7 2007, made by Beverage Creations in favor of
 8 Thomas Wade Investments.
 9 Q. For \$50,000?
 10 A. Yes.
 11 Q. Did you draft this note?
 12 A. Yes.
 13 Q. And from whom did you get the
 14 information that you put into the note?
 15 A. I'm not sure.
 16 Q. Is this identical to the earlier
 17 notes we looked at save for the amount, the
 18 date, and the holder changing specific to
 19 this particular note?
 20 A. It's probably fairly consistent.
 21 Q. Do you know why BCI entered into
 22 this note?
 23 A. My understanding was that Thomas
 24 Wade gave them \$50,000.
 25 Q. Do you know why?

50

1 S. Czarnik
 2 A. I don't know why.
 3 Q. Were you a participant in any of
 4 the negotiations over amount or terms?
 5 A. No.
 6 Q. Do you know what the proceeds of
 7 this note were used for by BCI?
 8 A. No.
 9 Q. Was this note converted into stock?
 10 A. Not to my knowledge.
 11 Q. Do you know whether any portion of
 12 this note has been assigned?
 13 A. Not to my knowledge.
 14 MS. GERSTMAN: Mark that, please,
 15 as Exhibit 14.
 16 (Plaintiffs Exhibit 14,
 17 Convertible Note bearing production
 18 number SJC 00069-75, marked for
 19 identification, as of (this date.)
 20 MS. GERSTMAN: And this, please, as
 21 Exhibit 15.
 22 (Plaintiffs Exhibit 15,
 23 Convertible Note bearing production
 24 number SJC 00076-82, marked for
 25 identification, as of this date.)

51

1 S. Czarnik
 2 Q. Mr. Czarnik, I've handed you what
 3 has been marked as Exhibit 14 and Exhibit 15.
 4 Have you seen these before?
 5 A. Yes.
 6 Q. Can you identify them, please?
 7 A. Note made by Beverage Creations in
 8 favor of Thomas Wade, February 25th, 2008.
 9 Q. For \$105,000?
 10 A. Yes.
 11 Q. That's Exhibit 14. And Exhibit 15?
 12 A. Note dated February 25th, 2008,
 13 made by Beverage Creations in favor of
 14 Bellatolia.
 15 Q. For \$105,000?
 16 A. Yes.
 17 Q. And did you draft these?
 18 A. Yes.
 19 Q. When did you draft them?
 20 A. Probably right around the date.
 21 Q. And who asked you to draft them?
 22 A. I'm not sure who asked me to draft
 23 it.
 24 Q. Again, it would be one of
 25 Mr. Fleming --

52

1 S. Czarnik
 2 A. One of the --
 3 Q. -- Mr. Feedback?
 4 A. Or Bob Wieden or Patrick Dado, one
 5 of the four.
 6 MR. PICKHOLZ: Let her finish the
 7 question, because now I'm not clear
 8 which one you gave the answer as to who
 9 would have given you instruction.
 10 THE WITNESS: I'm sorry.
 11 Q. Okay. We can go back and make sure
 12 the record is clear. Can you tell me the
 13 four individuals, one of whom or more of whom
 14 may have given you instructions to draft
 15 these convertible notes?
 16 A. Carl Fleming, Robert Feedback,
 17 Patrick Dado, Bob Wieden.
 18 MR. PICKHOLZ: Just let her finish
 19 the question before you answer.
 20 THE WITNESS: Sorry.
 21 Q. And were you part of any of the
 22 negotiations of the terms of these notes?
 23 A. No.
 24 Q. So the terms were provided to you?
 25 A. Yes.

Stephen Czarnik 3/27/2008 9:00:00 AM

53

1 S. Czarnik
 2 Q. What was the intention of these
 3 notes? Do you know why BCI was entering into
 4 these notes?
 5 A. I was told that each of these
 6 parties gave the company 105,000.
 7 Q. Do you know why?
 8 A. I don't. I assume -- I can't -- I
 9 don't know.
 10 Q. Did you know whether Beverage
 11 Creations had a particular need for funds at
 12 the time of these notes?
 13 A. I believe that they always needed
 14 money. I mean I don't know if at this
 15 particular time they were in need of money.
 16 Q. Have you ever met Mr. Wieden?
 17 A. No.
 18 Q. Have you ever met Mr. Dado?
 19 A. No.
 20 Q. How many times have you spoken on
 21 the phone to Mr. Wieden?
 22 A. Several. Numerous.
 23 Q. How about Mr. Dado?
 24 A. Generally, they both get on the
 25 phone at the same time. I'm not sure if they

54

1 S. Czarnik
 2 share an office, but when you talk to one of
 3 them, generally the other one is on as well.
 4 Q. Have you ever visited their company
 5 in Minneapolis?
 6 A. No.
 7 Q. Again, I'll direct your attention
 8 to the same language that is on the top of
 9 Page 2. I quote, "The proceeds of this note
 10 are to be used for the transaction with the
 11 public company." Do you see where I'm
 12 referring?
 13 A. I do.
 14 Q. Do you know whether that was done?
 15 A. I don't -- I'm not sure what was
 16 done, but I know that the transaction already
 17 happened.
 18 Q. Right. What was the date of the
 19 transaction with the public company?
 20 A. I don't know. I don't have the...
 21 MS. GERSTMAN: I can go ahead and
 22 mark it as 16.
 23 (Plaintiff's Exhibit 16, Common
 24 Stock Purchase Agreement bearing
 25 production number 00001-8, marked for

55

1 S. Czarnik
 2 identification, as of this date.)
 3 Q. Have you seen Exhibit 16 before?
 4 A. Yes.
 5 Q. And can you tell me what that is?
 6 A. This is the agreement between
 7 Beverage Creations and Belmont Partners to
 8 purchase the controlling interest in Granito
 9 Golf.
 10 Q. Did you draft this document?
 11 A. No.
 12 Q. Do you know who did?
 13 A. No.
 14 Q. Did you participate in the
 15 negotiations of this transaction?
 16 A. No.
 17 Q. Were you BCI's counsel with respect
 18 to this transaction?
 19 A. Yes.
 20 Q. Did BCI have another lawyer
 21 involved in the negotiations of this
 22 transaction?
 23 A. The terms were non-negotiable.
 24 Q. Do you know who presented the terms
 25 to BCI?

56

1 S. Czarnik
 2 A. No.
 3 Q. Did you read this document and have
 4 an opportunity to counsel BCI before it
 5 executed, Mr. Wieden executed this document?
 6 MR. PICK-HOLZ: I guess first I have
 7 an objection, I'm not sure you've laid a
 8 foundation that he was retained -- let
 9 me withdraw it.
 10 MS. GERSTMAN: Okay.
 11 A. Yes.
 12 Q. And did you indeed provide counsel
 13 to BCI in connection with this agreement?
 14 A. Yes.
 15 Q. The date on this is -- it shows an
 16 effective date of August 30th, 2007; is that
 17 correct?
 18 A. I believe so.
 19 Q. And that's the date this was
 20 signed?
 21 A. I'm not sure what date it was
 22 signed.
 23 Q. It indicates it was executed as of
 24 the date first written above, which would be
 25 the 30th of August?

Stephen Czarnik 3/27/2008 9:00:00 AM

57

1 S. Czarnik
 2 A. Correct.
 3 Q. Was there a different date on which
 4 this transaction was closed, when it became
 5 actually effectuated?
 6 A. No. I think the full purchase
 7 price had to be paid, was paid by then.
 8 Q. And the shares were transferred?
 9 A. Yeah.
 10 Q. So in light of the fact that this
 11 transaction was completed August 30th, 2007,
 12 does this reference in the February 25th,
 13 2008, note, both of the notes, Exhibit 14 and
 14 Exhibit 15, make any sense to you?
 15 A. No.
 16 Q. And that's not referring to any
 17 other transaction with a public company?
 18 A. Not that I'm aware of.
 19 Q. If you would look at the last page
 20 of each of these exhibits, 14 and 15, I have
 21 provided you with unexecuted copies. These
 22 are the way they were provided to me by your
 23 counsel. Were these notes executed?
 24 A. I believe that they were.
 25 Q. And do you have any knowledge as to

58

1 S. Czarnik
 2 whether BCI then received \$210,000 as a
 3 result of these two notes?
 4 A. I was told that they had received
 5 the money.
 6 Q. Do you know what they did with it?
 7 A. I do not know.
 8 Q. Do you have executed copies in your
 9 files?
 10 A. I had thought I did. In looking at
 11 this, if this is what we provided, it's not
 12 signed. I'm surprised.
 13 MS. GERSTMAN: Mr. Pickholz, that
 14 will be another request that I ask that
 15 you just double check and see whether
 16 you have executed copies in
 17 Mr. Czarnik's files.
 18 MR. PICKHOLZ: Okay.
 19 Q. Have these notes, Exhibits 14 and
 20 15, been converted?
 21 A. Not to my knowledge.
 22 Q. Do you know whether the holders
 23 have any intention of converting them?
 24 A. I have no knowledge.
 25 Q. Have you ever talked to Mr. Fleming

59

1 S. Czarnik
 2 about whether he's going to convert this note
 3 we've marked as Exhibit 14?
 4 A. No.
 5 Q. How about anyone on behalf of
 6 Bellatalla with respect to Exhibit 15?
 7 A. No.
 8 Q. Has anyone from the company
 9 discussed with you anything with respect to
 10 the conversion of these notes?
 11 A. No.
 12 Q. To your knowledge, is Beverage
 13 Creations, Inc., planning any more stock
 14 offerings?
 15 MR. PICKHOLZ: Bob, are you going
 16 to object to that?
 17 MR. FORRESTER: No.
 18 MR. PICKHOLZ: Okay. So you're not
 19 asserting attorney client privilege?
 20 MR. FORRESTER: No.
 21 MR. PICKHOLZ: Okay. Go ahead.
 22 A. I have no knowledge.
 23 Q. You have not been retained to
 24 counsel BCI with respect to any more stock
 25 offerings, as you sit here today?

60

1 S. Czarnik
 2 A. No.
 3 MS. GERSTMAN: Could you mark this,
 4 please, as Exhibit 17.
 5 (Plaintiff's Exhibit 17, Entity
 6 Subscription Agreement bearing
 7 production number APP 0047-52, marked
 8 for identification, as of this date.)
 9 MS. GERSTMAN: Exhibit 18, please.
 10 (Plaintiff's Exhibit 18, Entity
 11 Subscription Agreement bearing
 12 production number SJC 00021-26, marked
 13 for identification, as of this date.)
 14 MS. GERSTMAN: And Exhibit 19,
 15 please.
 16 (Plaintiff's Exhibit 19, Entity
 17 Subscription Agreement bearing
 18 production number SJC 00027-32, marked
 19 for identification, as of this date.)
 20 Q. Mr. Czarnik, I've handed you
 21 Exhibits 17, 18, and 19. Have you seen these
 22 before?
 23 A. Yes.
 24 Q. And can you identify them, please.
 25 A. Exhibit 17 is a subscription

Stephen Czarnik 3/27/2008 9:00:00 AM

61

1 S. Czarnik
 2 agreement, Wynn Industries subscribing for
 3 3,333,333 shares of Beverage Creations.
 4 Q. And this is dated December 17th,
 5 2007?
 6 A. Correct.
 7 Q. Okay. Exhibit 18?
 8 A. Exhibit 18 is a subscription
 9 agreement as well with Bellatania for
 10 3,333,333 shares of Beverage Creations.
 11 Q. And this is in connection with the
 12 same offering and bearing the same date as
 13 17?
 14 A. Yes.
 15 Q. And if you could identify
 16 Exhibit 19, please.
 17 A. Exhibit 19 is a subscription
 18 agreement, Thomas Wade for 3,333,333 shares
 19 of Beverage Creations.
 20 Q. Dated December 17th, 2007; correct?
 21 A. Correct.
 22 Q. And have you seen these before?
 23 I'm sorry. I think I asked you that already.
 24 Okay. Did you draft these documents?
 25 A. Yes.

62

1 S. Czarnik
 2 Q. When did you draft these?
 3 A. Probably shortly before
 4 December 17th.
 5 Q. And in drafting these, did you
 6 follow a form or a format that you've used
 7 before?
 8 A. Yeah. Sure.
 9 Q. Where did you get the particular
 10 information that you put into these
 11 subscription agreements, for example, the
 12 amount of shares?
 13 A. From the instructions, the
 14 conversion instructions.
 15 Q. From those documents or did
 16 somebody speak to you about that?
 17 A. No. I spoke with Mr. Fleming about
 18 that.
 19 MS. GERSTMAN: On the record.
 20 (Discussion off the record.)
 21 Q. Mr. Czarnik, looking at Exhibits
 22 17, 18, and 19, did you anything to verify
 23 the representations in those subscription
 24 agreements?
 25 A. Yes. I had a discussion with

63

1 S. Czarnik
 2 Mr. Fleming.
 3 Q. And when did you have that
 4 discussion with Mr. Fleming?
 5 A. Prior to me sending these documents
 6 out for signature.
 7 Q. So sometime in mid-December?
 8 A. If not prior to.
 9 Q. And what did you and Mr. Fleming
 10 discuss?
 11 A. We discussed the way these
 12 offerings -- how they work and the technical
 13 aspects of the offering.
 14 Q. What did you discuss with
 15 Mr. Fleming about the way they work?
 16 A. I told him that 504 offerings are
 17 very technical and they're often misused, but
 18 they can be done if you follow the rules.
 19 And the rules are under 504(B) that if you
 20 fall within any of the Romanesque state
 21 exemption categories, 502 kicks in, and then
 22 you're exempt from the resale provisions of
 23 502 Regulation D, and thus the shares can be
 24 issued without legend.
 25 In addition, I told him that

64

1 S. Czarnik
 2 pursuant to 144, which is the
 3 anti-distribution section, that Rule 504(B)
 4 securities are specifically exempt from the
 5 definition of restricted securities.
 6 I also told him about Texas law and
 7 pointed him to a memorandum that's on the
 8 Securities Commission page in Texas by
 9 Ms. Crawford, State Securities Commissioner,
 10 wherein it describes these types of offerings
 11 and how they can be done and what are the
 12 requirements and what are the parameters.
 13 And then there was an updated memorandum as
 14 well that I directed him to.
 15 Q. Did you discuss anything else with
 16 Mr. Fleming about the way these offerings
 17 work?
 18 A. My understanding was he was
 19 familiar with them, but I don't know what
 20 he's done in the past, so I had to tell him
 21 how -- and direct him to read things on how
 22 they need to be done.
 23 Q. The memo that you referred to by
 24 Ms. Crawford, where does that appear?
 25 A. On the Texas State Securities

Stephen Czamik 3/27/2008 9:00:00 AM

65

1 S. Czamik
 2 Commission web page.
 3 Q. And what about the updated memo you
 4 referred to?
 5 A. It's there as well.
 6 Q. Do you know whether Mr. Fleming
 7 went to look at any of the source material
 8 that you advised him about?
 9 A. I'm not certain.
 10 Q. Did you provide him with those
 11 memos or direct him where he could find them?
 12 A. You know, I didn't provide him with
 13 those memos, but I did provide him with some
 14 information regarding these offerings,
 15 specifically the proposed rule changes to 504
 16 and how the proposed rule changes actually
 17 specifically indicate that these offerings --
 18 shares can be issued without resale
 19 limitations pursuant to a proper 504(B)
 20 offering.
 21 Q. That's a proposed rule change?
 22 A. Correct. The comment to the
 23 proposed rule. Well, it's in the proposed
 24 rule. It's a whole -- when they deal -- they
 25 talk about changing 504 or proposing to

66

1 S. Czamik
 2 change 504 asking for comments as well as I
 3 believe they want to institute a 507.
 4 Q. And you actually provided
 5 Mr. Fleming with a hard copy of the comment
 6 to the proposed rule?
 7 A. I don't believe I -- I probably
 8 just told him where to go to find it, because
 9 I've never -- I've never like sent him
 10 anything, nor been -- sent him any mail, nor
 11 have I met him in person. So I wouldn't have
 12 been able to hand him anything.
 13 Q. So, then, this conversation, this
 14 discussion you had with Mr. Fleming was over
 15 the telephone; is that correct?
 16 A. Yes.
 17 Q. You mentioned that he was familiar
 18 with these kinds of offerings. What is the
 19 basis for your statement there?
 20 A. That my recollection is that he
 21 told me he was familiar with these kinds of
 22 offerings.
 23 Q. Did he tell you anything else about
 24 his familiarity with these kinds of
 25 offerings?

67

1 S. Czamik
 2 A. No.
 3 Q. Did you know whether he had
 4 previously participated in any offerings made
 5 pursuant to Rule 504?
 6 A. No.
 7 Q. Did he describe his familiarity to
 8 you in any more detail?
 9 A. No, not that I recall.
 10 Q. You said you also discussed the
 11 technical aspects of the offering. Is that
 12 something different than what you've already
 13 described to me?
 14 A. No. I mean I think there's
 15 technical aspects from the fact that it has
 16 to be -- it would have to be entity that's
 17 engaged in the offering that's actually the
 18 subscriber, wherein all the owners of that
 19 entity are accredited investors. And the
 20 Texas rules provide for two ways to show
 21 accredited status pursuant to I think it's
 22 1094. One is that you're an accredited
 23 entity investor pursuant to the 501 rules,
 24 that is, an entity where all its owners are
 25 accredited investors pursuant to the federal

68

1 S. Czamik
 2 rule, or an entity that has five million
 3 dollars of assets.
 4 Q. And this is information that you
 5 gave to Mr. Fleming, that you discussed with
 6 him?
 7 A. Yes.
 8 Q. And what did he tell you in this
 9 conversation?
 10 A. Okay. I mean I don't recall
 11 whether he -- what his reaction was, but it
 12 wasn't -- it wasn't anything that would make
 13 me recall it. Do you know what I mean. It
 14 wasn't anything outlandish.
 15 Q. Did he ask you any questions about
 16 the information you gave him?
 17 A. Not that I recall.
 18 Q. Did you say anything else or did he
 19 say anything else in this discussion other
 20 than what you've already told me?
 21 A. I don't know -- I've had several
 22 discussions with Mr. Fleming, so I don't know
 23 -- I don't know what -- I can't differentiate
 24 really in my memory.
 25 Q. How long did this discussion last,

Stephen Czarnik 3/27/2008 9:00:00 AM

69

1 S. Czarnik
 2 the one you had prior to the execution of the
 3 subscription agreements?
 4 A. The discussion I had with respect
 5 to the technical aspects of 504 happened
 6 different times throughout my relationship
 7 with Mr. Fleming.
 8 MR. CRAINE: And one place I want
 9 to interject here, as it relates to BCI,
 10 my understanding is you represent BCI
 11 and weren't representing Fleming; is
 12 that correct?
 13 THE WITNESS: Right.
 14 MR. CRAINE: So I've been letting
 15 you answer regarding discussions with
 16 Mr. Fleming related to BCI's business.
 17 If any of these discussions are not
 18 related to BCI's business or the
 19 transactions involving BCI, Mr. Fleming
 20 and TWM have no intention to waive
 21 privilege, so I just caution you there.
 22 MR. PICKHOLZ: Do you understand?
 23 I guess I'll put an instruction on. The
 24 objection is that any communications you
 25 had with Fleming in the context of the

70

1 S. Czarnik
 2 attorney client relationship with
 3 Fleming, they're asserting the privilege
 4 to. So if the conversations are
 5 blurred, we should probably err on the
 6 side of caution and let them take it up
 7 either with each other or the judge.
 8 okay. If you're convinced it was in
 9 connection with these particular
 10 documents or these transactions here and
 11 BCI, then they're not waiving the
 12 privilege and you can discuss your
 13 conversations with Fleming. Do you
 14 understand the distinction or do you
 15 need to take a break for a minute?
 16 THE WITNESS: No, but I've already
 17 discussed it.
 18 MR. PICKHOLZ: I understand.
 19 That's water under the bridge. But
 20 going forward,
 21 THE WITNESS: Okay.
 22 MR. PICKHOLZ: And we'll let them
 23 make the objection.
 24 MR. CRAINE: And when you're
 25 talking about the subscription

71

1 S. Czarnik
 2 agreements and that specific discussion,
 3 you know, that's related to the BCI
 4 documents and that's separate. But if
 5 you're getting to a point where I had a
 6 long series of conversation and you're
 7 not sure if they're related to this or
 8 to something else, then that's where we
 9 need to stop and take a breath.
 10 THE WITNESS: I understand.
 11 MR. PICKHOLZ: Why don't we give
 12 him a minute after her question so he
 13 can either make an objection, and then
 14 if you're not clear on which
 15 conversation, why don't you mention that
 16 and then we'll see if he has an
 17 objection or not and take it from there.
 18 THE WITNESS: Okay.
 19 Q. Approximately how many discussions
 20 did you have with Mr. Fleming related to the
 21 BCI offering?
 22 A. Several. Numerous.
 23 Q. Can you be any more specific than
 24 that?
 25 A. No.

72

1 S. Czarnik
 2 Q. Would your time records reflect how
 3 many conversations you had or at least give
 4 us some indication? Is that something your
 5 time records might show?
 6 A. Fortunately, I don't keep time
 7 records.
 8 Q. You don't keep time records?
 9 A. No.
 10 Q. Okay.
 11 MR. CRAINE: Some of us here are
 12 quite jealous about that.
 13 A. Which is the reason why I left the
 14 firm, you know, the bigger firms.
 15 Q. Do you keep any notes or make any
 16 notations with respect to how you spent your
 17 time on this matter representing BCI?
 18 A. Do you mean with respect to how
 19 much time things took?
 20 Q. Yeah. Let's start with that.
 21 A. No.
 22 Q. Do you have a calendar that you
 23 keep that would have notations in it that
 24 would reflect communications with people in
 25 connection with the BCI offering?

Stephen Czarnik 3/27/2008 9:00:00 AM

73

1 S. Czarnik
 2 A. No, I don't keep a calendar like
 3 that.
 4 Q. Any other documents in the course
 5 of your provision of professional services
 6 that you keep that would indicate who you
 7 talked to when or for how long?
 8 A. Do you know -- I believe they're
 9 called like lab books. They're black lab
 10 books. They're smaller than regular paper.
 11 I generally, when someone calls me, I
 12 generally write it down. I'm not that
 13 accurate and consistent with it. Certainly
 14 if I have messages, I write it down.
 15 Q. And the lab books that you kept
 16 during this period of time, that would be
 17 December 2007 and I guess forward --
 18 actually, let me amend that and say the time
 19 during which you represented BCI for the
 20 transaction we've been talking about today,
 21 do you have those lab books then?
 22 A. I do.
 23 MS. GERSTMAN: Mr. Pickholtz, a
 24 redaction task coming. I will request
 25 that you provide us with those lab books

74

1 S. Czarnik
 2 to the extent that they reflect data
 3 relevant to this litigation. And I,
 4 again, will get a request to you.
 5 MR. PICKHOLTZ: Okay. And can we
 6 discuss, obviously once we've taken a
 7 look at it, whether you need the whole
 8 book or just the entries?
 9 MS. GERSTMAN: Yes.
 10 Q. In the course of your discussions
 11 with Mr. Fleming related to the BCI offering,
 12 did you have any conversations with him
 13 specifically related to whether the stock
 14 should be restricted? And I'm talking about
 15 in addition to what you've already told me.
 16 A. No.
 17 Q. Any conversations with Mr. Fleming
 18 in connection with the BCI offering regarding
 19 whether there should be a legend on the BCI
 20 stock other than what you've already told me?
 21 A. No.
 22 Q. Did you have any discussions with
 23 Mr. Fleming in connection with the BCI
 24 offering with respect to what he or Thomas
 25 Wade Investments was going to do with its BCI

75

1 S. Czarnik
 2 stock?
 3 A. No.
 4 Q. Can you specifically recall any
 5 other discussions that you had with
 6 Mr. Fleming related to the way these
 7 transactions work and the technical aspects
 8 of the BCI offering?
 9 MR. PICKHOLTZ: Again, on this
 10 one --
 11 MR. CRAINE: I think the answer is
 12 going to be no, so.
 13 MR. PICKHOLTZ: If it's in
 14 connection with the BCI or these
 15 documents or this set of circumstances,
 16 you can go ahead and talk about it. If
 17 it's not, let's give them a chance to
 18 object, just because she worded the
 19 question somewhat generally.
 20 A. Can you repeat the question.
 21 Q. Sure. Do you recall any other
 22 specific conversations that you had with
 23 Mr. Fleming related to the BCI offering, the
 24 way it works, and the technical aspects of
 25 the offering other than what you've already

76

1 S. Czarnik
 2 told me?
 3 A. The content of those
 4 conversations --
 5 Q. Yes.
 6 A. -- other than what I've already
 7 told you?
 8 Q. Yes.
 9 A. Not that I recall.
 10 Q. Did you do any other due diligence
 11 to determine whether the representations made
 12 in Exhibit 17, 18, and 19 were true and
 13 accurate?
 14 A. Just the discussion with
 15 Mr. Fleming and Mr. Feedback.
 16 Q. How many discussions did you have
 17 with Mr. Feedback in connection with the due
 18 diligence that you were doing on the BCI
 19 transaction?
 20 A. Several. I mean I know that he --
 21 it's my understanding that Mr. Fleming and
 22 Mr. Feedback met with the folks from Beverage
 23 Creations in person several times, so they
 24 would be a good -- they would be a good
 25 source,

Stephen Czarnik 3/27/2008 9:00:00 AM

77

1 S. Czarnik
 2 Q. And when you were speaking to
 3 Mr. Feedback in connection with this
 4 transaction, what capacity was Mr. Feedback
 5 acting in?
 6 A. My understanding was that he was a
 7 board member of Beverage Creations.
 8 Q. And was he providing you with
 9 information as a board member of Beverage
 10 Creations?
 11 A. He was providing me with -- my
 12 understanding was yes.
 13 Q. Did you have any understanding that
 14 Mr. Feedback and his entity, Summit Advisory
 15 Partners I believe it is, had a relationship
 16 with Beverage Creations?
 17 A. My understanding was that they did
 18 have a relationship.
 19 Q. And what did you understand about
 20 the scope of that relationship?
 21 A. I didn't understand it at all.
 22 Q. How did you know that Mr. Feedback
 23 was talking to you as a director as opposed
 24 to an outside consultant to Beverage
 25 Creations?

78

1 S. Czarnik
 2 A. If he was speaking of Beverage
 3 Creations, speaking about Beverage Creations
 4 to me, I believe that it was about in his --
 5 I would assume it was in his capacity as a
 6 director of Beverage Creations. I don't know
 7 -- that's my assumption.
 8 Q. And anything else underlying that
 9 assumption that you can tell me about today,
 10 any other basis for your assumption? Let me
 11 rephrase. Any basis for your assumption?
 12 A. Other than the fact that he was a
 13 director?
 14 Q. Correct.
 15 A. Yeah, I mean I wasn't certain and
 16 I'm not certain if Beverage Creations and
 17 Summit ever had a contractual relationship
 18 together. And that being so, the only way I
 19 would be talking with him about it would be
 20 as a director.
 21 Q. But you knew that there was some
 22 relationship with Summit?
 23 A. I knew there was some relationship
 24 with Summit, but I didn't -- no one has ever
 25 -- I've never seen a contract, for example,

79

1 S. Czarnik
 2 between the two.
 3 Q. Did you ever ask Mr. Feedback in
 4 what capacity he was speaking to you?
 5 A. I don't know that I did.
 6 Q. And what did you discuss with
 7 Mr. Feedback with respect to the due diligence
 8 you did in connection with the
 9 representations made in Exhibit 17 through
 10 19?
 11 A. Again, I spoke with Mr. Feedback
 12 about the offerings and the nature of the
 13 offerings and the technical aspects of the
 14 offerings and certainly would have updated
 15 Mr. Feedback with the proposed rule changes to
 16 the Rule 504 as well as the Texas
 17 intricacies.
 18 Q. Did you ever have any discussions
 19 with Mr. Feedback in connection with your due
 20 diligence relating to whether the shares
 21 should be restricted?
 22 A. No.
 23 Q. Whether the shares should have a
 24 legend on them?
 25 A. Not to my knowledge.

80

1 S. Czarnik
 2 Q. Did you talk to Mr. Feedback about
 3 the representations that the company BCI was
 4 making?
 5 A. Yes.
 6 Q. And what did you talk to him about
 7 in that regard?
 8 A. The same regard that we had just
 9 spoke of, which is the technical aspects of
 10 the rule and what is required in order for me
 11 to be able to deliver a legal opinion.
 12 Q. And did you do anything to verify
 13 the representations made in the subscription
 14 agreements, 17, 18, and 19, the specific
 15 factual representations in there?
 16 A. Specific factual representations.
 17 Other than what we just went through?
 18 Q. Right.
 19 A. No, not to my knowledge.
 20 Q. And correct me, I mean I hear you
 21 talking about Rule 504 and 502 and 144 in
 22 some -- and I don't mean to characterize your
 23 testimony, but what I would like to do is get
 24 into the specifics, if there are specifics,
 25 that you told Mr. Feedback and Mr. Fleming,

Stephen Czarnik 3/27/2008 9:00:00 AM

81

1 S. Czarnik
 2 Is there anything more specific that you told
 3 them?
 4 A. I don't have anything specific. I
 5 don't recall anything specific other than the
 6 general nature of those discussions.
 7 Q. If you would look at Exhibit 17,
 8 and if it's okay with you and your counsel
 9 and everybody involved, I'm going to put
 10 Exhibit 17 in front of you and ask these
 11 questions with respect to 17. My review, and
 12 you can do your own independent review, is
 13 that 18 and 19 are the same in these respects
 14 that I'm going to ask you about. So I'm
 15 asking you with respect to all three
 16 agreements and I'm hoping to truncate the
 17 proceedings a little bit. If you want to
 18 answer them separately or if counsel suggests
 19 we proceed that way, I'm glad to do it, too.
 20 But I'm asking with respect to all three of
 21 these exhibits and you tell me if that poses
 22 a problem.
 23 MR. PICKHOLZ: Unless other counsel
 24 has an objection, why don't we just say
 25 we'll take your representation on it,

82

1 S. Czarnik
 2 and to the extent that they're the same,
 3 unless you tell us there should be a
 4 difference for some reason, you know,
 5 we'll just take it that way, and if at
 6 the end of the day it turns out that
 7 there is difference in the text or
 8 something, then I guess the answers
 9 won't apply.
 10 MS. GERSTMAN: Okay.
 11 MR. PICKHOLZ: Is that okay?
 12 MS. GERSTMAN: Sure.
 13 Q. So looking at Exhibit 17, paragraph
 14 five, "Representations, Warranties, and
 15 Covenants of the Undersigned. 5.1, General."
 16 And I direct your attention to sub(b) on the
 17 top of the second page of this document.
 18 "The undersigned is an entity formed pursuant
 19 to the laws of Texas and maintains its
 20 principal place of business within the State
 21 of Texas. The undersigned was not formed to
 22 evade and is not in connection with this
 23 investment evading the registration
 24 requirements of the Securities Act of 1933 as
 25 amended."

83

1 S. Czarnik
 2 Did you do anything to verify the
 3 representation made by Wynn Industries,
 4 Bellatalia, and Thomas Wade Investments?
 5 A. I don't recall, but my general rule
 6 would be I would check the State of Texas and
 7 see if they were a Texas formed entity and
 8 what their registered address was.
 9 Q. Did you do that in this case?
 10 A. I'm not certain that I did, but I
 11 believe that I did.
 12 Q. And is that something that you
 13 would have kept in your files that you had
 14 done it?
 15 A. No, because I would have just
 16 pulled it up on the web site and verified it.
 17 Q. Anything else that you did in
 18 connection with checking the representation
 19 in 5.1(b)?
 20 A. I would also -- I had a discussion
 21 with Mr. Fleming, I'm certain, about -- which
 22 is probably how I found out about his other
 23 investments, his farm and things of that
 24 nature, that it wasn't -- his entity wasn't
 25 merely formed to participate in this

84

1 S. Czarnik
 2 offering.
 3 Q. So you asked Mr. Fleming on behalf
 4 of Thomas Wade Investments the facts
 5 underlying this representation in (b)?
 6 A. Yes.
 7 Q. And he gave you satisfactory
 8 answers?
 9 A. He gave me satisfactory answers
 10 about with respect to him, or, I'm sorry, not
 11 him, but Thomas Wade and the other two as
 12 well.
 13 Q. So what did he tell you about
 14 Thomas Wade with respect to sub(b)?
 15 A. That they had other business
 16 operations within it, non-securities related.
 17 Q. And which point under (b) does that
 18 go to?
 19 A. I think it would go towards the
 20 second sentence, that it was not formed to
 21 evade and is not in connection with his
 22 investment evading.
 23 Q. And Mr. Fleming made
 24 representations to you on behalf of
 25 Bellatalia as well?

Stephen Czarnik 3/27/2008 9:00:00 AM

85

1 S. Czarnik
 2 A. I asked him about Bellatalla,
 3 because I had never -- I hadn't spoken with
 4 Ryan Reynolds and I hadn't spoken with Jason
 5 Wynn.
 6 Q. Did you understand that Mr. Fleming
 7 was authorized to or able to make
 8 representations on behalf of Bellatalla and
 9 Wynn Industries?
 10 A. No, but at some point I had to rely
 11 on people's word, and when they signed this
 12 document, they're making a representation to
 13 me, and it specifically says in here that I
 14 can rely on it.
 15 Q. Did you do anything else to confirm
 16 sub(b), the representation here that we've
 17 been talking about, 5.1 sub(b)?
 18 A. No. I verified that it was signed.
 19 Q. How about 5.1 sub (c), and I will
 20 spare reading it into the record. But what
 21 did you do, if anything, with respect to
 22 verifying that representation?
 23 A. I relied on the representation
 24 given.
 25 Q. Did you do anything to get behind

86

1 S. Czarnik
 2 that representation to check it in any way?
 3 A. I didn't need to get behind it.
 4 They did.
 5 Q. Who is "they"?
 6 A. Whoever signed the document. They
 7 made the representation.
 8 Q. Did you ask anybody any questions,
 9 Mr. Fleming or anybody else, any questions
 10 about Thomas Wade's or Wynn Industries' or
 11 Bellatalla's status as an accredited
 12 investor?
 13 A. I probably did. Mr. Fleming.
 14 Q. Do you actually recall doing that?
 15 A. I believe I did in connection with
 16 the discussion we had with respect to the
 17 representation in the earlier question.
 18 Q. With respect to sub(b)?
 19 A. Yes.
 20 Q. So this was the same conversation
 21 you asked him about sub(c)?
 22 A. Um-hmm.
 23 Q. That's a yes, for the record?
 24 A. Yes, it is. Sorry.
 25 Q. And what did you ask him?

87

1 S. Czarnik
 2 A. What kind of net worth that he and
 3 his partners had and were the -- I say
 4 partners just because -- the two other
 5 companies. And he said that the accredited
 6 investor isn't an issue at all whatsoever.
 7 Q. Did he say anything else to you?
 8 A. I think he mentioned that
 9 Mr. Reynolds has seats on the floor next to
 10 some billionaire at the Dallas Mavericks game
 11 and that Jason and he are fairly wealthy.
 12 Q. Did Mr. Fleming say anything else
 13 with respect to the accredited status of
 14 Thomas Wade, Bellatalla, or Wynn Industries?
 15 A. I'm not certain.
 16 Q. Looking at sub(d), "The undersigned
 17 will not engage in any activity that will
 18 constitute a distribution of the shares and
 19 will not violate Regulation M or any other
 20 federal or state securities laws. The
 21 undersigned is experienced in such matters
 22 and understands the applicable laws and
 23 regulations."
 24 Did you take any steps to verify
 25 the representation contained in 5.1 sub(d)?

88

1 S. Czarnik
 2 A. I think the discussions I had with
 3 Mr. Fleming with respect to 504 and relying
 4 on the representations of the people who
 5 signed the documents are the steps that I
 6 took.
 7 Q. Did you ask Mr. Fleming whether he
 8 had investment intent with respect to the BCI
 9 shares he was going to take in the offering?
 10 A. No.
 11 Q. I'm sorry. Did you ask Mr. Fleming
 12 with respect to Thomas Wade Investments
 13 whether Thomas Wade had investment intent
 14 with respect to the BCI shares?
 15 A. No.
 16 Q. Did you discuss with him whether he
 17 or Thomas Wade had any plan to sell the
 18 shares?
 19 A. No.
 20 Q. To distribute the shares?
 21 A. (Indicating).
 22 Q. Did you ask him that?
 23 MR. CRAINE: You need to answer
 24 audibly.
 25 THE WITNESS: I'm sorry.

Stephen Czamik 3/27/2008 9:00:00 AM

89

1 S. Czamik
 2 MR. CRAINE: That head shake she
 3 can't get.
 4 A. Well, I'm not certain that
 5 investment intent pursuant to Texas law is
 6 required with respect to 109, Rule 109.
 7 Q. You don't think investment intent
 8 is required?
 9 A. I'm not certain that it is.
 10 Q. Do you have an opinion one way or
 11 the other?
 12 MR. PICKHOLZ: Are asking generally
 13 or under Rule 109?
 14 MS. GERSTMAN: Rule 109.
 15 A. I'm not certain that it is.
 16 Q. Was investment intent something
 17 that factored into your opinion that was
 18 ultimately issued, I haven't introduced it
 19 yet as an exhibit, but did investment intent
 20 play into your opinion with respect to this
 21 offering?
 22 A. It was a factor because I wasn't
 23 certain whether or not it applies to 109.
 24 Q. So did you make any inquiry as of
 25 any of the potential shareholders, any of the

90

1 S. Czamik
 2 takers in the 504 offering as to their
 3 investment intent?
 4 A. No.
 5 Q. Did you make any inquiry to any of
 6 the shareholders whether they had any
 7 intention of selling the shares?
 8 A. No. I relied on the document, and
 9 there's provisions in the document with
 10 respect to investment intent and whether or
 11 not they had a view to distribution and view
 12 to sale.
 13 Q. Did you do anything else along the
 14 lines of due diligence to confirm the
 15 representation here in 5.1(d)?
 16 A. No. Not that I recall.
 17 Q. Have you ever talked to Ryan
 18 Reynolds?
 19 A. I've talked to him I believe twice.
 20 Q. Have you ever met him?
 21 A. No.
 22 Q. When did you first learn of a
 23 person named Ryan Reynolds in this
 24 connection?
 25 A. I only really -- I only really knew

91

1 S. Czamik
 2 of him as Ryan. And I didn't -- I've only
 3 spoken with him twice, and once was within
 4 the last two months. And each of the times
 5 it was Mr. Fleming who just basically handed
 6 the phone to him. So I became aware of
 7 Mr. Reynolds probably the beginning of
 8 February.
 9 Q. February '08?
 10 A. Yes.
 11 Q. But you prepared a subscription
 12 agreement in December '07 for Bellatalia.
 13 Did you not connect Mr. Reynolds, Ryan
 14 Reynolds, with Bellatalia?
 15 A. I didn't really know -- no, I
 16 didn't really connect Ryan Reynolds with
 17 Bellatalia. I didn't -- the only thing I did
 18 know is his name was Ryan. I didn't -- I
 19 don't believe, actually, that I even
 20 completed the signature page, because I
 21 didn't know who Bellatalia, who the person
 22 behind it was.
 23 Q. Who got the subscription
 24 agreements, Exhibits 17, 18, and 19, signed,
 25 executed?

92

1 S. Czamik
 2 A. It was either the company or
 3 Mr. Fleming.
 4 Q. As of the time you prepared the
 5 subscription agreement for Bellatalia,
 6 Exhibit 18, what did you know about
 7 Bellatalia?
 8 A. Nothing.
 9 Q. So both the conversations you've
 10 had with Mr. Reynolds have been subsequent to
 11 February '08?
 12 A. No. One conversation was
 13 subsequent to February '08.
 14 Q. And when was the first
 15 conversation?
 16 A. I don't recall when it was. It was
 17 -- it could have been December. It could
 18 have been September. Do you know what I
 19 mean. It was a very, very short
 20 conversation. I was having a discussion with
 21 Mr. Fleming, and he put Mr. Reynolds on the
 22 phone.
 23 Q. Was this discussion with
 24 Mr. Reynolds and Mr. Fleming in connection
 25 with BCI, this one in fact -- I'll say it's

Stephen Czarnik 3/27/2008 9:00:00 AM

93

1 S. Czarnik
2 fall '07 because it sounds like that's about
3 as specific as you can put it right now, fall
4 or winter '07?
5 A. Yes, I believe it probably was.
6 Q. And what did you discuss with
7 Mr. Fleming and Mr. Reynolds on that
8 conversation?
9 A. Mr. Fleming said you've got to talk
10 to Ryan, just, you know, not matter of
11 factly, but just talk to Ryan because he
12 thinks that when he gets 504 stock, he can
13 just pass it out to people. And then he put
14 him on the phone, and I said this is Stephen
15 Czarnik, absolutely not, you can't do that,
16 and you need to talk to your lawyer, do you
17 have a lawyer? He said yeah. I said you've
18 got to talk to him about this because that
19 can't be done. I don't believe that you can
20 just hand stock and just -- hand stock out to
21 people. And that was that discussion.
22 Q. Was Mr. Fleming any more specific
23 or Mr. Reynolds any more specific in
24 describing this passing out the stock to
25 people? What did that mean?

94

1 S. Czarnik
2 A. Like give stock out. Receive the
3 stock and then give it out to a number of
4 people.
5 Q. Did you understand him to mean
6 somewhat contemporaneously with receiving the
7 stock?
8 A. Yes.
9 Q. Did you tell him anything else in
10 this conversation?
11 A. No.
12 Q. Did Mr. Reynolds or Mr. Fleming say
13 anything else in this conversation?
14 A. That was it.
15 Q. Did Mr. Reynolds identify his
16 attorney to you in this conversation?
17 A. I don't believe it was that
18 conversation where he did.
19 Q. He did in a different one?
20 A. Yes.
21 Q. And was that the conversation
22 subsequent to 2/08, February '08?
23 A. Yes.
24 Q. What was that conversation about?
25 A. That conversation was about

95

1 S. Czarnik
2 something that I had learned, that he was
3 named in an action with the Commission
4 against him, and other defendants were
5 attorneys Stocker and O'Hill. And basically,
6 excuse me, but what the hell is going on
7 here. And I told him I needed his lawyer's
8 information, I need to talk to him
9 immediately.
10 Q. Did you call him?
11 A. No.
12 Q. No. I'm sorry. Did you call
13 Mr. Reynolds?
14 A. I don't have his number.
15 Q. Well, how did you end up --
16 A. I told Carl to get him on the
17 phone.
18 MR. PICKHOLZ: Let her finish the
19 question because she's got to take it
20 down.
21 THE WITNESS: I'm sorry.
22 Q. Just to make sure we have a clear
23 record, so you learned of we'll call it the
24 Stocker action by the SEC. How did that come
25 to your attention?

96

1 S. Czarnik
2 A. It came to my attention -- the
3 actual action?
4 Q. Yes.
5 A. The action came to my attention
6 when it was released in September.
7 Q. I'll represent to you that the
8 filing date was September 26th, 2007.
9 A. Okay.
10 Q. Did you learn of it then, around
11 that time?
12 A. Shortly thereafter when it was
13 posted.
14 Q. And how did you learn of it?
15 A. It was posted on the Commission's
16 web site
17 Q. So you saw it on the westbound?
18 A. Probably.
19 Q. You were just looking yourself and
20 you happened to see it?
21 A. I'm not sure if that was the fact
22 or someone like called me and said that
23 there's two lawyers that are involved in an
24 action.
25 Q. And at that time when you learned

Stephen Czamik 3/27/2008 9:00:00 AM

97

99

1 S. Czamik
 2 about it sometime in September '07, did you
 3 do anything about it? Did you do anything?
 4 A. I didn't know -- I didn't identify
 5 any of these people's involvements in it. I
 6 only saw Stocker and O'Neil and read the
 7 allegations and...
 8 MS. GERSTMAN: Let me go ahead and
 9 mark this as Exhibit 20.
 10 (Plaintiff's Exhibit 20, Complaint,
 11 marked for identification, as of this
 12 date.)
 13 Q. At the time this action came to
 14 your attention did you read the complaint?
 15 A. I went through it, yeah.
 16 Q. Did you note Ryan M. Reynolds as a
 17 defendant?
 18 A. No, I didn't.
 19 Q. Did that name mean anything to you
 20 as of September 2007?
 21 A. I don't believe that it -- it's not
 22 that it didn't mean anything or it did mean
 23 anything, but I didn't recognize the name
 24 Ryan M. Reynolds here as being the same
 25 Ryan M. Reynolds that Mr. Fleming was

1 S. Czamik
 2 A. Right.
 3 Q. So what precipitated that?
 4 A. Because I was on vacation with my
 5 family, and I had gotten a call telling me
 6 that there is a real issue with Beverage
 7 Creations, that the stock is -- there's no
 8 current public information up and the stock
 9 has traded enormously. So I called
 10 Mr. Fleming, I called Mr. Feedback, and was
 11 fairly upset and told Mr. Feedback that we
 12 need to get the Pink Sheet disclosure
 13 document posted immediately to have some sort
 14 of public information up. And I asked Carl
 15 basically what the hell is going on here.
 16 Q. When was this that you received
 17 this call that you first described informing
 18 you of a real issue with BCI?
 19 A. First full week of February.
 20 Q. And who called you?
 21 A. Joseph Meuse.
 22 Q. Can you spell that, please, his
 23 last name?
 24 A. M-u-s-e.
 25 Q. Who is Joseph Meuse?

98

100

1 S. Czamik
 2 involved with in his offer.
 3 Q. How about relief defendants there?
 4 You can see Bellatalla LP is named as a
 5 relief defendant. Did that come to your
 6 attention in September?
 7 A. No.
 8 Q. When you reviewed the complaint?
 9 A. It didn't.
 10 Q. Were you aware of Bellatalla in
 11 September '07?
 12 A. I was aware because they executed a
 13 couple of notes.
 14 Q. Who had the Bellatalla notes
 15 executed? Who actually got the signatures on
 16 those notes? You know what, let me strike
 17 that question because there's no --
 18 A. There's no counter-signature.
 19 Q. Right, there's no
 20 counter-signature. Okay. Then what
 21 precipitated your phone call -- or I'm sorry.
 22 It wasn't necessarily your phone call.
 23 What precipitated you getting in
 24 touch with Mr. Reynolds in February of '08?
 25 Do I have that right?

1 S. Czamik
 2 MR. PICKHOLZ: It's M-u-s-e.
 3 A. He is the owner of Belmont.
 4 Q. Did he tell you anything else in
 5 this phone call other than what you already
 6 have testified to?
 7 MS. ALTENBAUMER-PRICE: We didn't
 8 hear that last question or two. Can you
 9 repeat that.
 10 MS. GERSTMAN: Sure.
 11 Q. What else did Mr. Meuse tell you in
 12 this conversation other than what you've
 13 already testified to?
 14 A. No. That was about it. He told me
 15 that -- what had been going on.
 16 Q. So what did you understand he was
 17 telling you was the issue? What was the
 18 problem?
 19 A. The problem was there was volume in
 20 a stock that should have -- has no
 21 information about. So it doesn't make sense.
 22 And when things don't make sense like that,
 23 there's generally an issue.
 24 Q. So you then called Mr. Fleming and
 25 Mr. Feedback?

Stephen Czarnik 3/27/2008 9:00:00 AM

101

1 S. Czarnik
 2 A. Correct.
 3 Q. And what did they say when you said
 4 we need the Pink Sheets disclosure posted
 5 immediately?
 6 A. Absolutely.
 7 Q. They agreed with you?
 8 A. Absolutely.
 9 Q. And both of them were on the phone
 10 at this time?
 11 A. No. Separate times.
 12 Q. So tell me what you said to
 13 Mr. Fleming when you got him on the phone.
 14 MR. CRAINE: And at that point are
 15 you representing him personally?
 16 THE WITNESS: I certainly wasn't
 17 giving him any advice. So I don't know
 18 that I was representing him. Do you
 19 understand what I mean? My discussion
 20 with him wasn't any sort of legal
 21 advice. It was pinpointing an issue.
 22 Q. You called him in respect to the
 23 BCI trading; is that correct?
 24 A. Correct.
 25 Q. And what did you tell Mr. Fleming

102

1 S. Czarnik
 2 specifically and what did he tell you?
 3 A. I told him what I had heard, and
 4 he's like -- he was -- I don't want to say
 5 surprised, but he was -- he basically
 6 confirmed, he goes, I know, it doesn't make
 7 sense. And so I said, well, you find out,
 8 you call your, you know -- I called them
 9 partners, and you find out what happened.
 10 And then I called Feedback and told him we got
 11 to get this disclosure statement up
 12 immediately.
 13 Q. And Feedback agreed?
 14 A. Yes.
 15 Q. Did it get put up immediately?
 16 A. Not immediately, but shortly
 17 thereafter.
 18 Q. Do you know how much time elapsed
 19 before the Pink Sheets information was up?
 20 A. I don't.
 21 Q. Did Mr. Fleming get back to you?
 22 You asked him to find out what was going on.
 23 A. Yeah.
 24 Q. Did he call you?
 25 A. He called me.

103

1 S. Czarnik
 2 Q. When?
 3 A. Same day.
 4 Q. What did he say?
 5 A. I believe it was the same day. He
 6 said he couldn't find anything out.
 7 Q. Do you recall what sort of volume
 8 was going on?
 9 A. No. It wouldn't -- I mean -- no.
 10 I have no idea.
 11 Q. And Mr. Fleming called back and
 12 said, I can't find anything out?
 13 A. Yes.
 14 Q. And he provided you with no
 15 explanation for the volume in the stock?
 16 A. Right.
 17 Q. And this, again, is sometime the
 18 first full week of February?
 19 A. Yes.
 20 Q. Did you have any further
 21 conversations with Mr. Fleming about this?
 22 A. About that particular incident?
 23 Q. Yes.
 24 MR. CRAINE: And would you be
 25 providing legal advice, again, is

104

1 S. Czarnik
 2 something you need to think about before
 3 you answer it.
 4 A. I'm certain that I had discussions
 5 with him. But there was never any sort of
 6 explanation that was offered.
 7 Q. How about Mr. Feedback, any further
 8 conversations with Mr. Feedback about this?
 9 MR. CRAINE: No, because we have a
 10 real -- you know, you need to think
 11 about whether you're providing legal
 12 advice to someone who is your client
 13 before you answer it. And if you give
 14 me a minute to object, I would
 15 appreciate it.
 16 THE WITNESS: I will.
 17 MR. CRAINE: All right.
 18 MR. PICKHOLZ: Why don't we do
 19 this. In connection with any of the
 20 calls with Feedback, why don't we hear
 21 the question --
 22 THE WITNESS: With Fleming.
 23 MR. CRAINE: Yeah. If both of them
 24 were on the phone, it's not an issue to
 25 me, okay. And if you're certain both of

Stephen Czarnik 3/27/2008 9:00:00 AM

105

1 S. Czarnik
 2 them were on the phone, then, you know,
 3 that's a different situation. But if
 4 you're on the phone just with Carl, and
 5 he is your client, which you've already
 6 told us here, then you need to think
 7 about what kind of legal advice you're
 8 giving him and what you're telling him
 9 and whether that's something you should
 10 waive after we've requested you don't
 11 waive it. So that's just a warning I
 12 want to give you. I just want you to
 13 think and stop, and if you think, you
 14 know, in my opinion sitting here right
 15 now I don't think this is legal advice
 16 and I'm just going to say it and waive
 17 it when I've told you not to, that's a
 18 problem. And if you've got a concern, I
 19 would rather we stop for a minute and
 20 think about it before it's out and
 21 there's nothing that can be done.
 22 MR. PICKHOLZ: I need to comment on
 23 that. Is Fleming's position that
 24 Stephen was representing him in
 25 connection with his role as investor in

107

1 S. Czarnik
 2 don't have an issue with it. But you
 3 know that better than I do as we sit
 4 here.
 5 MR. PICKHOLZ: I think what we have
 6 is -- I mean you can have an attorney
 7 client relation with someone in one
 8 capacity but not for another purpose.
 9 And I guess what we have here is, my
 10 understanding, and correct me if I'm
 11 wrong, is that there was an attorney
 12 client relation with Fleming in
 13 connection with other matters. But in
 14 connection with Fleming's investment
 15 with BCI and these notes that we're
 16 talking about and this conversion,
 17 Stephen had an attorney client
 18 relationship with BCI but not your
 19 client in this context.
 20 MR. CRAINE: Right, and so --
 21 MR. PICKHOLZ: Is that accurate?
 22 MR. CRAINE: No, I think that's
 23 fair and I think that's accurate. My
 24 concern is where we get into an area of
 25 general legal advice, you know, we

106

1 S. Czarnik
 2 BCI?
 3 MS. GERSTMAN: And let me clarify
 4 that, too, because the investor is
 5 Thomas Wade Investments.
 6 MR. CRAINE: Right.
 7 MS. GERSTMAN: Which he has
 8 testified is not his client.
 9 MR. CRAINE: And I've tried to give
 10 him some leeway to kind of make this
 11 easier, because he's in a different
 12 situation, and I understand it, and I
 13 don't envy it. You know, what I want to
 14 make sure is that we have a chance to
 15 stop it before it comes out. And, you
 16 know, I'm not criticizing any of your
 17 answers or giving you a hard time. I
 18 just want to make sure we stop and pause
 19 before it comes out and you think about
 20 kind of what your relationship was with
 21 my client at that time and what your
 22 obligations are to him before it comes
 23 out. And if it's something you think is
 24 directly related to BCI and has nothing
 25 to do with you representing Carl, then I

108

1 S. Czarnik
 2 talked about things that you all
 3 generally talked about. And when you
 4 get to kind of the general, even though
 5 it may relate to a BCI event, that's
 6 where we get in an area where it's more
 7 difficult to tell and it's probably more
 8 difficult for you.
 9 MR. PICKHOLZ: Can I take two
 10 seconds, take a break with my client?
 11 MS. GERSTMAN: Yes. Off the
 12 record.
 13 (Recess taken from 1:04 p.m. to
 14 1:10 p.m.)
 15 MR. PICKHOLZ: It's my
 16 understanding that in connection with
 17 BCI and these notes, Mr. Czarnik was
 18 acting as BCI's counsel. However, there
 19 was an attorney client relationship with
 20 Mr. Fleming, and that was, in my
 21 understanding, it was more -- in our
 22 understanding it was more than just for
 23 a particular transaction. There may
 24 have been sort of a general advice
 25 component to that. So to that extent,

Stephen Czarnik 3/27/2008 9:00:00 AM

109

1 S. Czarnik
 2 if he was speaking with Fleming on
 3 behalf of BCI and that was clear that
 4 was his role, then I guess, unless BCI
 5 has an objection, I think it falls under
 6 the waiver. If there is an ambiguity
 7 there, I don't mean to cause problems,
 8 but I think at that point we're going to
 9 have to defer to Mr. Fleming's lawyer's
 10 attorney client objection and let you
 11 guys either work it out or get a judge
 12 to tell us, you know, what we need to
 13 answer. So I guess we'll take it
 14 question by question.
 15 MR. CRAINE: That's great. I
 16 appreciate it.
 17 MR. PICKHOLZ: So make sure you
 18 give a pause and give him enough time.
 19 MS. GERSTMAN: Did we have a
 20 pending question?
 21 (The following question was read.)
 22 "QUESTION: How about Mr. Feedback,
 23 any further conversations with
 24 Mr. Feedback about this?"
 25 A. Yes.

110

1 S. Czarnik
 2 Q. Well, how many did you have?
 3 A. Several.
 4 Q. Can you be any more specific than
 5 several?
 6 A. No.
 7 Q. More than five?
 8 A. I'm not sure.
 9 Q. And what did you say to Mr. Feedback
 10 and what did he say to you in these
 11 conversations?
 12 A. We were just talking and going
 13 through making sure the information statement
 14 was getting done and getting posted.
 15 Q. You're talking about the
 16 information on Pink Sheets?
 17 A. Yes.
 18 Q. Did you discuss anything else with
 19 Mr. Feedback during this time with respect to
 20 your call that you got from Mr. Meuse in the
 21 first full week of February, that resulted
 22 from that call and the subsequent
 23 communications?
 24 A. Yeah. I probably told him that we
 25 got real problems.

111

1 S. Czarnik
 2 Q. What did you mean by that?
 3 A. That I think there's things going
 4 on here.
 5 Q. What did you mean by that?
 6 A. It doesn't make sense. Things just
 7 like this don't happen in a vacuum. I mean
 8 there's something else at work.
 9 Q. And specifically you're talking
 10 about the fact of high volume trading in the
 11 stock when there was a lack of Pink Sheets
 12 information?
 13 A. I don't think there was any
 14 information.
 15 Q. So that's the problem you're
 16 talking about?
 17 A. Yes.
 18 Q. The fact that there was high volume
 19 trading in the stock where there was a lack
 20 of public information?
 21 A. Correct.
 22 Q. And did Mr. Feedback or Mr. Fleming
 23 ever give you an answer to why that was
 24 happening?
 25 MR. PICKHOLZ: Again, can we break

112

1 S. Czarnik
 2 It out so if we need an objection --
 3 MS. GERSTMAN: Sure.
 4 Q. Did Mr. Feedback ever give you an
 5 answer as to why that was happening?
 6 A. No.
 7 Q. Did Mr. Fleming ever give you an
 8 answer as to why that was happening?
 9 MR. CRAINE: You're fine to answer
 10 that one.
 11 A. No.
 12 Q. So for you what was the resolution
 13 of this issue that you observed, this trading
 14 with no public information in the
 15 marketplace, how did it resolve for you?
 16 A. We got -- we had to get that
 17 disclosure statement up. That's the only
 18 thing the company could have done to protect
 19 itself. And they did.
 20 Q. Did you or the company take any
 21 other steps as a result of this disparity?
 22 A. I'm not sure what the timing of
 23 everything was, but certainly we got our arms
 24 around the fact that Jason Wynn or Wynn
 25 Industries or whoever was sending out

Stephen Czarnik 3/27/2008 9:00:00 AM

113

1 S. Czarnik
2 mailers.
3 Q. When did that come to your
4 attention?
5 A. I don't recall, February perhaps.
6 Q. How did it come to your attention?
7 A. There was a newspaper article.
8 Q. What article are you referring to?
9 A. I believe it was from a Dow Jones
10 reporter.
11 Q. And who brought that news article
12 to your attention?
13 A. I'm not certain if it was
14 Mr. Feedback or Mr. Christmas, Anthony
15 Christmas.
16 Q. And who is Anthony Christmas?
17 A. I believe he was the IR, investor
18 relations person for the company.
19 Q. And what did you do as a result of
20 reading this news article?
21 A. Prepared a cease and desist letter
22 for the company to send to Mr. Wynn.
23 MS. GERSTMAN: Can you mark this
24 please as Exhibit 21.
25 (Plaintiff's Exhibit 21, Letter

114

1 S. Czarnik
2 dated February 19, 2006, to Jason Wynn
3 from Bob Woden, marked for
4 identification, as of this date.)
5 Q. I've handed you, Mr. Czarnik, what
6 is marked as Exhibit 21. Is this the letter
7 you're talking about?
8 A. Yes.
9 Q. And who drafted this?
10 A. I believe I did the first draft,
11 and then this came back from the company to
12 me.
13 Q. And so the one that ultimately was
14 sent out was the one with company revisions
15 to it?
16 A. Correct.
17 Q. You approved it and said it was
18 okay to go?
19 A. No.
20 Q. No? They sent it out without
21 having you look at it again?
22 A. I'm not sure that they sent it out.
23 Q. Oh. This Exhibit 21, do you know
24 whether this was sent out to Mr. Wynn?
25 A. No. I was -- I don't know that I

115

1 S. Czarnik
2 was even told that. Let me try and think. .
3 When we were finished with -- when I sent
4 them the draft and they sent me this, I was
5 under the impression that they had sent it,
6 but I don't know that as fact.
7 Q. What gave you that impression that
8 they had sent it?
9 A. They told me they were going to
10 send it out.
11 Q. Did you ever see an executed copy?
12 A. No.
13 Q. Do you know of any reason why they
14 wouldn't send it?
15 A. No. Well -- why they wouldn't send
16 it.
17 MR. PICKHOLZ: Don't speculate.
18 A. No. Then no.
19 Q. The first sentence of paragraph two
20 reads, "Please be advised that you and your
21 firm are not and never have been under
22 contract or agreement with Beverage
23 Creations, Inc., to conduct these services."
24 Who wrote that sentence?
25 A. I don't remember if that was part

116

1 S. Czarnik
2 of my draft or an iteration of or pieces of.
3 Q. Do you know that to be true?
4 A. My understanding is that they've
5 never contracted with Mr. Wynn or any of his
6 companies to engage in promotional activity.
7 That's my understanding.
8 Q. I think I need to go back to your
9 second conversation with Mr. Reynolds,
10 because I think we did not exhaust that, but
11 correct me if I'm wrong.
12 MR. PICKHOLZ: If you can, which
13 conversation?
14 MS. GERSTMAN: Yes. Let me try to
15 orient.
16 Q. Well, you had two with him, and
17 this is the second one that I believe you
18 tied to learning that he was named in this
19 action, is that correct?
20 A. (Indicating).
21 Q. That's a yes, for the record?
22 A. Yes. Sorry.
23 Q. Can you tell me how you got in
24 touch with Mr. Reynolds?
25 A. I told Carl I wanted to speak with

Stephen Czarnik 3/27/2008 9:00:00 AM

117

1 S. Czarnik
 2 Mr. Reynolds.
 3 Q. And how was it that you now tied
 4 the Ryan Reynolds in this action and the
 5 Ballatalia in this action to the Ryan
 6 Reynolds involved in BCI?
 7 A. Because something was dramatically
 8 wrong in the transaction, so there had to be
 9 a reason, and you look for a reason.
 10 Q. So this is after you've learned
 11 about the stock trading with no information?
 12 A. No.
 13 Q. Okay. What was wrong with the --
 14 A. Oh, not the stock trading but the
 15 high volume.
 16 Q. Yes.
 17 A. With no information.
 18 Q. Yes.
 19 A. Correct.
 20 Q. Okay. So in connection with that,
 21 one of the things that you did was connect
 22 this action to the Ryan Reynolds and BCI?
 23 A. Um-hmm.
 24 Q. That's a yes?
 25 A. Yes.

118

1 S. Czarnik
 2 Q. So you called Mr. Fleming, said I
 3 went to speak to Mr. Reynolds, and then what
 4 happened?
 5 A. Then I spoke with Mr. Reynolds, and
 6 we had a discussion, and I asked him, you
 7 know, basically what's going on, why didn't
 8 you mention this at all, this action. He's
 9 like it's -- he basically said that they went
 10 the lawyers, the lawyers are really bad guys.
 11 And then I didn't want -- I actually didn't
 12 want to be on the phone with him. I just
 13 wanted to talk to his lawyer at that point.
 14 So I said can you give me your lawyer's
 15 number.
 16 Q. And what did he say?
 17 A. Yeah, sure.
 18 Q. And did he subsequently give you
 19 that name and number?
 20 A. I got it shortly thereafter.
 21 Q. What did he tell you? What name
 22 and number did he give you?
 23 A. Randy Henderson.
 24 Q. In any of your conversations with
 25 Mr. Reynolds, did you discuss the allegations

119

1 S. Czarnik
 2 in this action that we've marked as
 3 Exhibit 20?
 4 A. No.
 5 Q. And did you get in touch with
 6 Mr. Henderson?
 7 A. No. We never connected.
 8 Q. Did you try?
 9 A. I'm not sure if I called him and
 10 did he call me back or -- I don't recall what
 11 -- something between us happened or he
 12 reached out to me or I reached out to him or
 13 something happened, but we never connected.
 14 Q. And then did you drop your efforts
 15 at that point to talk to Mr. Henderson?
 16 A. I did, because I didn't know what
 17 -- I really didn't know what good it was
 18 going to do. It didn't really -- it didn't
 19 -- the only thing we could do was make sure,
 20 from the company's perspective, that the
 21 information was up there, and obviously they
 22 ceased to do business with, you know, those
 23 folks.
 24 Q. I'm sorry. What folks, Ballatalia
 25 and Ryan Reynolds?

120

1 S. Czarnik
 2 A. Yes.
 3 Q. And did the company also cease
 4 business with Wynn Industries and -- well, I
 5 guess there wasn't -- well, let me strike the
 6 question.
 7 A. Yeah.
 8 Q. Let me strike it. Did you talk to
 9 anybody else with respect to the allegations
 10 against Ryan Reynolds in this complaint?
 11 MS. ALTENBAUMER-PRICE: We're going
 12 to object to any further questions on
 13 SEC versus Offill, because that case is
 14 in the process of being stayed, and
 15 discovery is not happening. So we would
 16 object to any discovery going on in this
 17 matter as to that matter.
 18 MS. GERSTMAN: Okay. I mean I'm
 19 asking if Mr. Czarnik talked to anybody
 20 with respect to the allegations in
 21 there. I'm not sure how that is
 22 discovery in the Offill matter.
 23 MS. ALTENBAUMER-PRICE: Well, you
 24 represent the SEC, which is a party in
 25 the Offill matter, so we're going to

Stephen Czarnik 3/27/2008 9:00:00 AM

121

1 S. Czarnik
 2 object to any further questions on SEC
 3 versus Offit.
 4 MS. GERSTMAN: Okay. Your
 5 objection is noted.
 6 Q. Mr. Czarnik, did you speak to
 7 anybody else with respect to the allegations
 8 in the complaint against Mr. Reynolds?
 9 THE WITNESS: I don't understand.
 10 If there's an objection, what happens?
 11 MR. PICKHOLZ: When a party makes
 12 an objection, that's making an objection
 13 for the record and for the SEC's
 14 counsel. If she wants to ask her
 15 question, though, then you can answer
 16 it. I mean that's something they'll
 17 take up with the judge later. It's on
 18 the record.
 19 THE WITNESS: Okay.
 20 A. I'm sorry.
 21 Q. Did you speak to anybody else about
 22 the allegations against Mr. Reynolds that you
 23 saw in this complaint SEC versus Offit?
 24 A. Yes.
 25 Q. With whom did you speak?

122

1 S. Czarnik
 2 A. Mr. Fleming.
 3 Q. And when was that?
 4 A. Late February, early March.
 5 MR. PICKHOLZ: I'm going to make an
 6 instruction. If we get into content of
 7 that conversation, we should, first of
 8 all, let Mr. Fleming's lawyer have the
 9 chance if he wants to object, and then
 10 if there's any doubt in your mind as to
 11 what context you were communicating in,
 12 we should just assert the attorney
 13 client privilege and let them go ahead
 14 and figure it out. Okay? If you're
 15 clear that it was on behalf of BCI and
 16 it wasn't an attorney client relation,
 17 then you can answer the question. And
 18 if you need to, we can go outside and
 19 you can ask me about the privilege
 20 issue.
 21 THE WITNESS: Okay. Thanks.
 22 MS. ALTENBAUMER-PRICE: We want to
 23 make sure to get on the record that
 24 we're going to continue to object to
 25 every question as to that, as to SEC

123

1 S. Czarnik
 2 versus Offit.
 3 Q. Did you call Mr. Fleming?
 4 A. Yes.
 5 Q. And what did you say and what did
 6 he say?
 7 MR. CRAINE: We'll object as
 8 privileged to that conversation.
 9 Q. And, Mr. Czarnik, you are going to
 10 decline to answer the question based on
 11 Mr. Craine's objection?
 12 MR. PICKHOLZ: I think we're going
 13 to -- we don't want to slow this up.
 14 We'll obviously have to come back again
 15 if that's what we're ordered to do, but
 16 I think we need to err on the side of
 17 caution here and let you guys get it
 18 figured out or get an order from the
 19 judge.
 20 MS. GERSTMAN: That's fine. I'm
 21 not going to push it. I'm just
 22 clarifying for the record.
 23 Q. Is that true, Mr. Czarnik, you're
 24 going to decline to answer the question?
 25 A. Yes.

124

1 S. Czarnik
 2 Q. Did you speak with anybody else
 3 with respect to the allegations that you read
 4 in the complaint against Mr. Reynolds?
 5 A. No.
 6 Q. Any other conversations with
 7 Mr. Reynolds other than what we've gone
 8 through?
 9 A. No. Not to my knowledge or
 10 recollection.
 11 Q. Do you know how Mr. Fleming knows
 12 Mr. Reynolds and Bellatalia?
 13 A. I have no --
 14 MR. CRAINE: Okay. Go ahead.
 15 A. I have no idea.
 16 Q. Did you know at any time that
 17 Mr. Reynolds had trading authority over Wynn
 18 Industries' and Thomas Wede Investments'
 19 brokerage accounts?
 20 MR. CRAINE: Again, to the extent
 21 that your answer would rely on anything
 22 that my client told you just when the
 23 two of you were speaking, we'll object
 24 as privileged.
 25 MS. GERSTMAN: But, again, just to

Stephen Czarnik 3/27/2008 9:00:00 AM

125

1 S. Czarnik
2 be clear, I'm asking as to Thomas Wade.
3 MR. CRAINE: Right.
4 MR. PICKHOLZ: In other words, if
5 you learned the information from someone
6 other than Fleming, then you can go
7 ahead and answer it. If you learned it
8 from Fleming, then there is the attorney
9 client objection, and, again, I'll
10 instruct you we will just defer and let
11 them get an order from the judge or work
12 it out.
13 MS. GERSTMAN: Well, I'm not sure
14 he's objecting. Clarify me if I'm
15 wrong. I think you're saying if it's --
16 MR. CRAINE: I'm trying to help him
17 and let him know, look, if it came from
18 someone other than my client, go ahead
19 and answer the question. If there were
20 discussions with my client specifically,
21 then we're going to raise the privilege.
22 Again, I want to give you the warning
23 before you answer.
24 A. Then I can't answer that question.
25 MR. PICKHOLZ: Okay. So then I'll

126

1 S. Czarnik
2 give you the instruction as well so it's
3 on the record.
4 THE WITNESS: Okay.
5 Q. Did you ever have any information
6 or knowledge that Bellatelle had a plan or
7 intent to sell its BCI shares shortly after
8 receiving them?
9 A. No.
10 Q. Do you know anything about
11 Reynolds' or Bellatelle's or any other
12 Reynolds entities' prior participation in any
13 private offerings of penny stocks? And I'm
14 going to exclude what we've talked about with
15 respect to the Offill complaint.
16 A. Yes.
17 Q. And what do you know?
18 A. He participated, as I recall, in a
19 transaction entitled -- the name of the
20 company was My Vintage Baby.
21 Q. How did you learn that?
22 A. Because I delivered the opinion in
23 that case.
24 MR. PICKHOLZ: Again, with regard
25 to that, if there are further follow-up

127

1 S. Czarnik
2 questions about your communications with
3 Reynolds in connection with the My
4 Vintage Baby transaction where you
5 represented him, that would be attorney
6 client privilege.
7 THE WITNESS: I never represented
8 Reynolds. You mean Fleming?
9 MR. PICKHOLZ: Who did you say you
10 represented in -- can we go off the
11 record for a minute.
12 MS. GERSTMAN: Off the record.
13 (Discussion off the record.)
14 Q. What did you know about Ryan
15 Reynolds' participation in the My Vintage
16 Baby offering?
17 A. As I recall, I think he invested
18 money in the company and received stock.
19 Q. Were you ever aware of any trading
20 activity by Mr. Reynolds in My Vintage Baby
21 stock?
22 A. No.
23 Q. Do you know of any other private
24 offerings of penny stocks that Mr. Reynolds
25 has been involved in other than what you've

128

1 S. Czarnik
2 already talked about?
3 A. Yes.
4 Q. What is that?
5 A. A company called Alchemy Creative.
6 Q. And how do you know about
7 Mr. Reynolds' participation in the Alchemy
8 Creative offering?
9 A. Because I wrote the opinion for
10 that.
11 Q. And what do you know about
12 Mr. Reynolds' participation there?
13 A. My understanding is that he
14 invested money in the company.
15 Q. Did he buy stock in the company?
16 Did he get stock through a private offering?
17 A. He did get stock through a private
18 offering, but I don't know it -- to my
19 recollection, yes.
20 Q. And do you know anything about his
21 trading activity in Alchemy Creative stock?
22 A. None whatsoever.
23 Q. Were you ever made aware of a
24 situation in either My Vintage Baby or
25 Alchemy Creative similar to the one that you

Stephen Czarnik 3/27/2008 9:00:00 AM

129

1 S. Czarnik
 2 described here with respect to BCI where you
 3 saw trading activity when there was a lack of
 4 public information?
 5 A. No.
 6 MS. GERSTMAN: You know what, I'm
 7 going to ask this question. I think --
 8 I'll ask it and you tell me if you have
 9 any -- because I asked a question about
 10 trading authority. What I don't think I
 11 did was break it out. So let me ask it.
 12 Q. Do you know anything about the
 13 trading authority Ryan Reynolds had over any
 14 Wynn accounts?
 15 MR. PICKHOLZ: It's a yes, no. You
 16 can give that answer, and then we'll see
 17 if there is follow-up.
 18 THE WITNESS: I can give it.
 19 MR. PICKHOLZ: If you can give a
 20 yes or no answer, go ahead.
 21 A. Okay. Yes.
 22 Q. And what do you know about that?
 23 MR. CRAINE: And the one place I'll
 24 caution you is if the only place you
 25 know it is from a conversation with my

130

1 S. Czarnik
 2 client where you may have been giving
 3 him legal advice, then I'm going to
 4 raise the privilege again, and you and
 5 your lawyer can talk about whether
 6 you're going to answer it.
 7 MR. PICKHOLZ: The same
 8 instruction. If you learned of it from
 9 Fleming, communication with him, and in
 10 your mind it's not clear that you were
 11 -- that conversation was you
 12 representing BCI and not giving him any
 13 kind of legal advice, you can talk about
 14 it. If it was a conversation where
 15 you're not sure or a conversation where
 16 you may have been representing Fleming
 17 or acting as his lawyer or giving him
 18 some advice, then they've asserted the
 19 attorney client privilege, and we'll
 20 respect that and decline to answer.
 21 A. I'm not sure. I don't know.
 22 MR. PICKHOLZ: So in that case I'm
 23 going to instruct the witness not to
 24 answer and we'll just defer to
 25 Mr. Fleming's counsel's attorney client

131

1 S. Czarnik
 2 privilege objection.
 3 Q. And, again, you're going to follow
 4 the advice of your counsel and not answer
 5 that question?
 6 A. Yes.
 7 Q. Has Ryan Reynolds ever referred any
 8 clients to you?
 9 A. No.
 10 Q. Did you have any further
 11 conversations with anybody with respect to
 12 the conversation you had with Mr. Reynolds
 13 where you and he were talking about him
 14 passing out stock?
 15 A. I don't understand the question.
 16 Q. Any other conversations aside from
 17 that one that you've already told me about
 18 where you had Mr. Reynolds and Mr. Fleming on
 19 the phone and you were talking about Reynolds
 20 passing out stock?
 21 A. None.
 22 Q. Do you have any information or
 23 knowledge that Ryan Reynolds or Bellatalla
 24 had arrangements or agreements to sell BCI
 25 stock to various friends and family?

132

1 S. Czarnik
 2 A. No.
 3 Q. Do you know John Mabry?
 4 A. No.
 5 Q. Robert Magness?
 6 A. No.
 7 Q. Alvin Kore?
 8 A. No.
 9 Q. Shelley Buhner?
 10 A. No.
 11 Q. Stephanie Tubbs?
 12 A. Yes.
 13 Q. Who is Stephanie Tubbs?
 14 A. I believe she is the secretary for
 15 Ryan Reynolds.
 16 Q. How do you know that?
 17 A. She emailed me asking me for
 18 documents shortly after the stop trading
 19 order.
 20 Q. After the suspension?
 21 A. Yes.
 22 Q. What did she ask you for?
 23 A. Copy of the subscription documents.
 24 Q. Anything else?
 25 A. And the legal opinion.

Stephen Czarik 3/27/2008 9:00:00 AM

133

1 S. Czarik
 2 Q. Did you send that to her?
 3 A. I did.
 4 Q. Any other communications that
 5 you've had with Stephanie Tubbs?
 6 A. No. Not to my knowledge. Not to
 7 my recollection.
 8 Q. Do you know Edward Speilhu?
 9 A. No.
 10 Q. Do you know Mark Reynolds?
 11 A. No.
 12 Q. Do you know Regan Reynolds?
 13 A. No.
 14 Q. Or Regan Roland?
 15 A. No.
 16 Q. Are you familiar with the
 17 Stockpick.com?
 18 A. No.
 19 Q. Did you know at any time that the
 20 504 recipients were going to sell or sold
 21 their stock, a chunk of their stock on
 22 January 30th, 2008?
 23 A. Are you saying that the stock was
 24 sold on January 30th?
 25 Q. Did anyone ever tell you that or

134

1 S. Czarik
 2 did it come to your attention that that
 3 happened?
 4 A. This is the first I've heard.
 5 Q. Do you know what percentage of free
 6 trading shares the shares issued in the 504
 7 offering were for BCI?
 8 A. Not off the top of my head.
 9 Q. Do you know generally?
 10 A. No.
 11 MS. GERSTMAN: Let's go off the
 12 record.
 13 (Discussion off the record.)
 14 (Lunch recess taken from 1:37 p.m.
 15 to 2:15 p.m.)
 16 AFTERNOON SESSION
 17 EXAMINATION (Cont'd.)
 18 BY MS. GERSTMAN:
 19 Q. Mr. Czarik, are you familiar with
 20 Wynn Industries?
 21 A. Yes.
 22 Q. How are you familiar with Wynn
 23 Industries?
 24 A. Initially -- well, they were one of
 25 the -- they were the company where some of

135

1 S. Czarik
 2 the convertible debt was assigned in the
 3 conversions.
 4 Q. Is that the first time you became
 5 aware of Wynn Industries?
 6 A. No.
 7 Q. How did you know Wynn Industries
 8 before?
 9 A. I think they were involved in two
 10 other deals that I was involved in.
 11 Q. My Vintage Baby and Alchemy?
 12 A. Yes.
 13 Q. And have you ever met Jason Wynn?
 14 A. No.
 15 Q. Talked to him?
 16 A. No.
 17 Q. How about Joseph Kim, do you know
 18 who that is?
 19 A. No idea.
 20 Q. Are you familiar with an entity
 21 called Wynn Holdings?
 22 A. I don't know if I -- not in any
 23 real sense, but the name, obviously, Wynn I'm
 24 familiar, you know, now I'm familiar with
 25 Wynn.

136

1 S. Czarik
 2 Q. And what is the extent of your
 3 knowledge of Wynn Industries' participation
 4 in Alchemy and My Vintage Baby?
 5 A. I believe they -- I believe, my
 6 recollection, Wynn Industries was an
 7 investor.
 8 Q. Do you have any knowledge of Wynn
 9 Industries' trading activity in either of
 10 those two stocks?
 11 A. None whatsoever.
 12 Q. Did you have any information or
 13 knowledge that Wynn Industries had a plan or
 14 intent to sell its BCI shares shortly after
 15 receiving them?
 16 A. No.
 17 Q. Did you ever talk to anybody about
 18 that?
 19 A. Talk to a third-party about whether
 20 or not they were going to sell their shares?
 21 Q. Yes.
 22 A. No.
 23 MS. GERSTMAN: Let's mark this,
 24 please, as the next exhibit.
 25 (Plaintiff's Exhibit 22, Letter

Stephen Czarnik 3/27/2008 9:00:00 AM

137

1 S. Czarnik
 2 dated December 17, 2007, bearing
 3 production number SJC 00101-103, marked
 4 for identification, as of this date.)
 5 Q. Mr. Czarnik, I've handed you what
 6 has been marked as Exhibit 22. Do you
 7 recognize that document?
 8 A. I do.
 9 Q. Can you identify it?
 10 A. It's a letter from Beverage
 11 Creations to my law firm, attention to me, to
 12 my attention.
 13 Q. And did you receive it on or about
 14 December 17th, '07?
 15 A. Yes.
 16 Q. Do you know who drafted this?
 17 A. I did.
 18 Q. And when did you begin drafting
 19 this letter?
 20 A. Probably shortly before the date of
 21 it.
 22 Q. And where did you get the
 23 information that is reflected in Exhibit 22?
 24 A. What specific information?
 25 Q. The representations made by the

138

1 S. Czarnik
 2 company.
 3 A. Where did I get the information --
 4 I don't understand.
 5 Q. For example, let's just go to
 6 sub(1), where did you get that information?
 7 A. Because that's what I was told that
 8 had happened.
 9 Q. Who told you that?
 10 A. Beverage Creations.
 11 Q. Who at Beverage Creations?
 12 A. I'm not sure.
 13 Q. Was it either --
 14 A. Either of the three.
 15 Q. Oh, the third would be -- so it's
 16 either Weden, Dado or --
 17 A. Feedback.
 18 Q. Feedback. And is that true of all
 19 the representations in here on behalf of the
 20 company?
 21 A. That I received them from someone
 22 else?
 23 Q. From one of those three people?
 24 A. Well, I received them from -- I
 25 mean I received the actual representations

139

1 S. Czarnik
 2 from Mr. Weden because he signed it.
 3 Q. So these are the representations?
 4 A. These are the representations, yes.
 5 Q. What is Exhibit A? This was
 6 produced to us without an Exhibit A attached.
 7 A. Exhibit A is a letter to the
 8 transfer agent that directs the transfer
 9 agent to issue the shares.
 10 MS. GERSTMAN: Mark, this, please,
 11 as Exhibit 23.
 12 (Plaintiff's Exhibit 23, Document
 13 dated December 17, 2007, bearing
 14 production number APP 0068-69, marked
 15 for identification, as of this date.)
 16 Q. Mr. Czarnik, I've handed you what
 17 has been marked as Exhibit 23. Is this the
 18 Exhibit A to Exhibit 22?
 19 A. Yes.
 20 Q. And can you identify 23 for the
 21 record, please?
 22 A. It's a letter from Beverage
 23 Creations to PacWest Transfer.
 24 Q. And who drafted this?
 25 A. I did.

140

1 S. Czarnik
 2 Q. Now, this is an executed copy that
 3 I've marked as Exhibit 23. Is this the one,
 4 is this a copy of what went out to PacWest,
 5 because it is missing the letterhead on the
 6 top?
 7 A. I believe so. I'm not sure.
 8 Q. Back to Exhibit 22, subparagraph
 9 four there at the bottom, in your drafting
 10 this letter, where did you get that
 11 information?
 12 A. Well, it's in the subscription
 13 agreement that the shareholders won't engage
 14 in that. So the company relies on the reps
 15 in the subscription agreement, but I'm not a
 16 party to the subscription agreement. My firm
 17 isn't. So I needed to rely -- I want to rely
 18 on their reps, the shareholder reps. The
 19 only way I can do it is to have this rep
 20 letter.
 21 Q. So this rep letter comes out of the
 22 representations made in the subscription
 23 agreements?
 24 A. As well as others from the company.
 25 Q. Is there any basis for that

Stephen Czarnik 3/27/2008 9:00:00 AM

141

1 S. Czarnik
 2 assertion in sub(4) other than what we've
 3 already talked about today?
 4 A. Well, I can't -- you mean basis as
 5 in -- explain "basis."
 6 Q. Let me ask it differently. Did you
 7 do anything to attest the accuracy or
 8 veracity of this statement from the company
 9 to you in sub(4)?
 10 A. I don't think it's possible to do
 11 so, because the representation is they're not
 12 going to do anything in the future.
 13 Q. And then the second sentence says,
 14 "Each shareholder has not offered or sold any
 15 portion of the shares to others or with a
 16 view to reselling or otherwise disposing of
 17 any portion of the shares."
 18 Did you do anything to confirm that
 19 representation in this Exhibit 22?
 20 A. Well, yes. I spoke with people,
 21 and we talked about those discussions, and
 22 that was what I did. And I relied on their
 23 representation, their word and their
 24 signature.
 25 Q. And those are conversations that

142

1 S. Czarnik
 2 we've already gone through today; is that
 3 correct?
 4 A. Absolutely.
 5 MS. GERSTMAN: Could we mark this,
 6 please, as Exhibit 24.
 7 (Plaintiff's Exhibit 24, Letter
 8 dated December 17, 2007, bearing
 9 production number SJC 00090-92, marked
 10 for identification, as of this date.)
 11 Q. Mr. Czarnik, you have in front of
 12 you what has been marked as Exhibit 24. Have
 13 you seen this before?
 14 A. Yes.
 15 Q. And can you identify it, please?
 16 A. It's a letter from me to the
 17 transfer agent dated December 17th.
 18 Q. Is that your signature on the last
 19 page?
 20 A. It is.
 21 Q. And did you draft this?
 22 A. Yes.
 23 Q. When?
 24 A. Probably shortly before
 25 December 17th.

143

1 S. Czarnik
 2 Q. How much time did you spend in
 3 drafting this letter and preparing for it?
 4 A. I can't be sure.
 5 Q. How did you prepare for it? What
 6 did you do in connection with drafting this
 7 letter?
 8 A. I went through the documents, the
 9 notes, whatever else was entailed, as well as
 10 the opinion certificate and made sure no
 11 changes were made to it and...
 12 Q. I'm sorry. What is the opinion
 13 certificate? Is that Exhibit 22?
 14 A. I'm sorry. The rep letter. The
 15 rep letter, yes, Exhibit 22. And did what I
 16 said in the letter, reviewed the Texas
 17 Securities Act and the Securities Act of 1933
 18 and the regulations promulgated thereunder.
 19 Q. And did you take an independent
 20 review of the Securities Act and the Texas
 21 Securities Act in connection with this
 22 opinion letter?
 23 A. I generally take a look to make
 24 sure nothing has changed.
 25 Q. Have you written opinion letters

144

1 S. Czarnik
 2 like this before?
 3 A. Yes.
 4 Q. Do you use prior samples as a
 5 template going forward?
 6 A. Most oftentimes.
 7 Q. In the first line what does
 8 "special counsel" mean, as you wrote it
 9 there?
 10 A. Special counsel means that -- well,
 11 I take it to mean in my mind that I'm not
 12 general counsel to Beverage Creations. I was
 13 engaged for a very limited purpose, the shell
 14 transaction, the share exchange, and the
 15 offering.
 16 Q. Is this the first opinion letter
 17 you've written that relies on these
 18 provisions of the Texas Securities Act?
 19 A. No.
 20 Q. How many others have you written?
 21 A. I'm not certain.
 22 Q. Do you remember for which issuers?
 23 A. Well, I'm fairly certain that
 24 Alchemy and My Vintage Beby.
 25 Q. Relied on these same Texas

Stephen Czarnik 3/27/2008 9:00:00 AM

145

1 S. Czarnik
 2 provisions?
 3 A. Yes.
 4 Q. Any others that come to mind?
 5 A. Not as I sit here.
 6 Q. Now, it's on the basis of this
 7 opinion letter that the shares issued in the
 8 504 offering were issued as unrestricted with
 9 no legend?
 10 A. I believe that's correct.
 11 Q. And is it your opinion that the
 12 shares in the 504 offering are exempt from
 13 registration and need no restrictive legend?
 14 A. As of December 17th or as of today?
 15 Q. Let me ask it first as of
 16 December 17th.
 17 A. Based on the information that I had
 18 at the time, yes.
 19 Q. And today?
 20 A. I'm not sure.
 21 Q. What changes your answer for today?
 22 A. Because of the allegations that
 23 I've been -- I've read in the -- the
 24 complaint?
 25 MR. PICKHOLZ: Complaint.

146

1 S. Czarnik
 2 Q. Anything else that affects your
 3 answer as to whether your opinion would be
 4 different today?
 5 A. And things we've discussed already,
 6 the volume, the promotion, and as well as the
 7 exhibit to the subpoena that I'm not here
 8 under, which was the emails and promotional
 9 materials.
 10 MR. PICKHOLZ: Can we go off for a
 11 minute.
 12 (Discussion off the record.)
 13 Q. And Exhibit 24, your opinion
 14 letter, was that sent to PacWest Transfer?
 15 A. Yes. My understanding is that it
 16 was.
 17 MS. GERSTMAN: Can we mark this,
 18 please, as Exhibit 25.
 19 (Plaintiff's Exhibit 25, Document
 20 dated December 17, 2007, bearing
 21 production number APP 0070-72, marked
 22 for identification, as of this date.)
 23 Q. Mr. Czarnik, do you recognize
 24 Exhibit 25?
 25 A. Yes.

147

1 S. Czarnik
 2 Q. What is it?
 3 A. It's a letter from the company
 4 Beverage Creations to -- one is to Wynn.
 5 There's three letters. One is to Wynn, one
 6 is to Bellatelia, and one is to Thomas Wade.
 7 Q. And did you participate in the
 8 creation of this document?
 9 A. Yes.
 10 Q. Did you draft it?
 11 A. Yes.
 12 Q. Why?
 13 A. This letter was drafted because --
 14 it's basically what I'll call -- we call it a
 15 verification letter, which basically says
 16 that, listen, the cert was paid for, and
 17 since it was paid for, the company, you know,
 18 holds the investor harmless if they try and
 19 say that it wasn't paid for or stop transfer
 20 or things of that nature.
 21 Q. So this is a standard document in
 22 these kinds of offerings?
 23 A. I don't know that it's standard,
 24 but I've definitely seen it before.
 25 Q. And when you say the cert was paid

148

1 S. Czarnik
 2 for, what are you referring to? What is the
 3 cert?
 4 A. Oh, the stock, the common stock.
 5 Q. Oh, the actual certificates
 6 themselves?
 7 A. Yeah. Common stock, yeah. This is
 8 -- as I recall, I think this was based upon
 9 -- this was drafted for basically the broker
 10 dealer benefit. I don't remember, actually.
 11 Q. Did somebody ask BCI to provide a
 12 letter like this?
 13 A. No. No.
 14 Q. You don't recall that any of the
 15 504 recipients asked BCI to provide a letter
 16 like this?
 17 A. I don't recall. But I wouldn't
 18 have just drafted it.
 19 Q. Do you know whether these pages,
 20 respectively, were given to Wynn Industries,
 21 Bellatelia, and Thomas Wade Investments?
 22 A. That I don't know.
 23 Q. Do you know whether these letters
 24 have subsequently been provided to anybody,
 25 either by those individuals or by the

Stephen Czarnik 3/27/2008 9:00:00 AM

149

1 S. Czarnik
 2 company?
 3 A. I don't know.
 4 Q. Did you provide any advice to BCI
 5 with respect to whether it should provide the
 6 indemnity in the next to last sentence?
 7 A. We went through the documents, so
 8 I'm fairly certain that I did.
 9 Q. And it was your advice that it was
 10 okay to make this indemnity?
 11 A. I think it was one of those
 12 situations -- well, I don't really recall why
 13 this is here, so I can't really say why --
 14 what my advice to them was at the time
 15 because I don't remember why we did this.
 16 Q. Well, do you have any --
 17 A. Why I did this or I drafted it and
 18 they signed it.
 19 Q. Do you have any recollection that
 20 you gave the company advice that they should
 21 not enter into the indemnification?
 22 A. No.
 23 MS. GERSTMAN: Let me mark
 24 Exhibit 26, please.
 25 (Plaintiff's Exhibit 26, Document

150

1 S. Czarnik
 2 bearing production number SJC 00093-99,
 3 marked for identification, as of this
 4 date.)
 5 Q. Mr. Czarnik, you've been handed
 6 Exhibit 26. Do you recognize this document?
 7 A. It's a shareholder list of Beverage
 8 Creations.
 9 Q. And it was produced out of your
 10 files, I'll represent to you, by the Bates
 11 stamp on the bottom. You can confirm that.
 12 Have you seen this before, then?
 13 A. Yes.
 14 Q. And when did you first see it?
 15 A. I don't recall, but sometime after
 16 it was issued, which was June -- I mean, I'm
 17 sorry, January 28th, 2008.
 18 Q. So this is a shareholding listing
 19 as of January 29th, 2008?
 20 A. Correct.
 21 Q. And how did this come to be in your
 22 files?
 23 A. I don't -- I don't recall the
 24 specific circumstances why I requested a
 25 list, if I requested a list from PacWest or

151

1 S. Czarnik
 2 they just sent me one.
 3 Q. Were you trying to confirm the
 4 receipt of the shares by the 504 recipients?
 5 A. No.
 6 Q. Did you review this when you
 7 received it?
 8 A. Probably not.
 9 Q. Did you ever request or receive any
 10 subsequent shareholder listings for BCI?
 11 A. I'm not certain. I doubt it, but
 12 I'm not sure.
 13 Q. Do you see there about, I don't
 14 know, about eight listings down, "Issued
 15 1/25/08," and you see a series of three
 16 issuances to Beilatalia?
 17 A. Yes.
 18 Q. And is that the 3,333,333 shares
 19 that they took in the 504 offering?
 20 A. I presume that it is.
 21 Q. And if you'll look two pages from
 22 there on SJC 00095, about two-thirds of the
 23 way down, 1/25/2008, the receipt by Thomas is
 24 all it says of, again, of 3,333,333 shares.
 25 Is that the receipt by Thomas Wade

152

1 S. Czarnik
 2 Investments --
 3 A. Yes.
 4 Q. -- of the 504 shares?
 5 A. Correct.
 6 Q. And at the bottom you see the same
 7 thing for Wynn with the same date, 1/25/2008.
 8 Is that the Wynn Industries shares it
 9 received pursuant to the 504 offering?
 10 A. Yes.
 11 MS. GERSTMAN: Please mark this as
 12 Exhibit 27.
 13 (Plaintiff's Exhibit 27, Document
 14 bearing production number APP 0179-181,
 15 marked for identification, as of this
 16 date.)
 17 Q. Do you recognize this document,
 18 Mr. Czarnik, Exhibit 27?
 19 A. No.
 20 Q. I'll represent to you that it is a
 21 press release for Beverage Creations issued
 22 on January 30th, 2008. Have you ever seen
 23 this in any form?
 24 A. I don't know that I have.
 25 Q. And if you'll read the first

Stephen Czarnik 3/27/2008 9:00:00 AM

153

1 S. Czarnik
 2 paragraph there, it says, "Beverage
 3 Creations, a hydration technologies
 4 corporation based in Minneapolis, Minnesota,
 5 announced today that it has initiated trading
 6 under symbol BYRG.PK as it introduces the
 7 patented water oxygen product to the
 8 multi-billion-dollar sports drink industry."
 9 Did you know that Beverage
 10 Creations initiated trading on January 30th,
 11 2008?
 12 A. I would have known when it did
 13 initiate trading. I'm not sure if that was
 14 the date or not.
 15 Q. How would you know that it
 16 initiated trading?
 17 A. I presume someone would have called
 18 me.
 19 MR. PICKHOLZ: Don't presume or
 20 guess.
 21 THE WITNESS: Oh. Sorry.
 22 Q. Did anybody do that?
 23 MR. PICKHOLZ: If there is a basis
 24 for memory or you're just not clear, you
 25 can say that, but don't presume or

154

1 S. Czarnik
 2 guess, okay.
 3 A. I don't -- what was the question?
 4 I'm sorry.
 5 Q. Let's try it this way. Do you
 6 recall knowing, even if you don't know the
 7 exact date, do you recall knowing or finding
 8 out that Beverage Creations initiated
 9 trading?
 10 A. Yes.
 11 Q. And do you know when you found that
 12 out?
 13 A. Late January.
 14 Q. And who advised you of that? Or
 15 how did it come to your attention?
 16 A. I'm not sure if -- I believe I was
 17 forwarded an email from FINRA or NASDAQ.
 18 Q. Back to this press release, did you
 19 ever see a draft of something like this?
 20 A. I never reviewed any of the
 21 company's press releases, including this one.
 22 Q. Did you have any information prior
 23 to January 30th, 2008, that Bellatalla, Wynn
 24 Industries, and/or Thomas Wade Investments
 25 were going to or intended to sell their BCI

155

1 S. Czarnik
 2 stock?
 3 A. I'm sorry to make you repeat that,
 4 but can you.
 5 Q. Did you have any information prior
 6 to January 30th, 2008, that Bellatalla, Wynn
 7 Industries, or Thomas Wade Investments were
 8 going to or intended to sell BCI stock?
 9 A. In what time frame? When the
 10 offering happened?
 11 Q. Any time prior to January 30th,
 12 '08.
 13 A. I didn't -- no one told me nor did
 14 I have any information from any one of the
 15 three participants that they intended to sell
 16 their stock.
 17 Q. Or from anybody. Did anyone tell
 18 you that they intended to sell their stock?
 19 A. No one told me that they intended
 20 to sell their stock.
 21 Q. I will represent to you that on
 22 January 30th, 2008, Bellatalla, Wynn
 23 Industries, and Thomas Wade Investments
 24 accounts each sold 1.33 million shares of
 25 BCI. Did you know that?

156

1 S. Czarnik
 2 A. No.
 3 Q. Is this the first time you're
 4 hearing that?
 5 A. Yes.
 6 MS. GERSTMAN: Let's mark this,
 7 please, as Exhibit 28.
 8 (Plaintiff's Exhibit 28, Three-page
 9 document bearing production number
 10 Reynolds 000115-117, marked for
 11 identification, as of this date.)
 12 Q. I've given you what has been marked
 13 as Exhibit 28. It's a series of emails, some
 14 of which I believe you are a recipient or
 15 initiator of and some of which you're not.
 16 I'm going to direct your attention to the
 17 first page, the second entry down. It says,
 18 From SCzarnik@cclip.com." Is that you, your
 19 email address?
 20 A. Um-hmm.
 21 Q. That's a yes?
 22 A. Yes.
 23 Q. And is this an email that you sent
 24 to the Lynn Thomas Group, Carlton Fleming,
 25 and Robert Feedback?

Stephen Czarnik 3/27/2008 9:00:00 AM

157

1 S. Czarnik
 2 A. Yes.
 3 Q. On February 25th, 2008?
 4 A. Yes.
 5 Q. What does that email refer to?
 6 What are you trying to do there?
 7 A. It refers to two things. One is we
 8 had a call with FINRA, Beverage Creations,
 9 and I was on the call with them. And they
 10 requested documents. And there was two
 11 documents that I didn't have. The notes, the
 12 August 1st notes I had, but I didn't have
 13 signed copies, so I asked the company for
 14 signed copies, and they said they couldn't
 15 find them. And then the conversion
 16 documents. So I resent them out to get
 17 executed.
 18 Also, if we go back, if you go to
 19 the earlier emails, there is an instruction
 20 that they were going to lend the company
 21 \$210,000 or more money, and they wanted notes
 22 for that. So I sent them those notes as
 23 well.
 24 Q. What is the reference in that
 25 second entry to executing -- are you asking

158

1 S. Czarnik
 2 them to execute the conversion of those
 3 August 1st, 2007, notes?
 4 A. Yeah, because no one had a copy.
 5 Q. No one had a copy.
 6 A. No.
 7 Q. Is this the first time the
 8 conversion was exercised?
 9 A. No, no, no, no. It was exercised
 10 before.
 11 Q. So did you receive back the
 12 conversion documents?
 13 A. Yes.
 14 Q. And they were executed?
 15 A. Yes.
 16 Q. And were they backdated to
 17 December 17th, '07?
 18 A. No. They were dated as of when the
 19 conversion occurred, and they were just
 20 confirming when it occurred.
 21 Q. And that was what date?
 22 A. December 17th.
 23 MS. GERSTMAN: Let's mark this,
 24 please, as Exhibit 29.
 25 (Plaintiff's Exhibit 29, One-page

159

1 S. Czarnik
 2 document bearing production number
 3 Reynolds 000071, marked for
 4 identification, as of this date.)
 5 Q. Mr. Czarnik, you're looking at what
 6 has been marked as Exhibit 29. Do you
 7 recognize this document?
 8 A. No.
 9 Q. You've never seen it before?
 10 A. No.
 11 Q. Let me direct your attention to the
 12 fourth entry down along the top, it says,
 13 "Czarnik 20,000."
 14 A. Yes.
 15 Q. Does that mean anything to you?
 16 A. Yeah, I received 20,000 from -- I
 17 don't know if it was Lynn Thomas Group or
 18 Carl Fleming or. My firm did. Not me
 19 personally.
 20 Q. And what was that for?
 21 A. That was 10,000 of which was for
 22 Beverage Creations.
 23 Q. What was the other 10,000 for?
 24 A. Alchemy Creative.
 25 MS. ALTENBAUMER-PRICE: Can you

160

1 S. Czarnik
 2 identify the documents for us and those
 3 that Mr. Czarnik can't identify just so
 4 that we have an idea what you're talking
 5 about?
 6 MS. GERSTMAN: Exhibit 29 is
 7 Reynolds 000071.
 8 MS. ALTENBAUMER-PRICE: Okay. If
 9 I'm just sitting here looking at
 10 nothing, can you give me an idea as to
 11 what you're talking about. 0071 doesn't
 12 help me sitting in this conference room.
 13 MS. GERSTMAN: Okay.
 14 MR. HENDERSON: Just a brief
 15 description of what the document is.
 16 MS. ALTENBAUMER-PRICE: A letter,
 17 an email? What are we looking at?
 18 MS. GERSTMAN: It is a one-page
 19 document with a fax header legend on it
 20 that actually says Page 2, and there are
 21 five rows of entries with dollar
 22 figures. And then it says "Total." And
 23 then there is, you know, some more
 24 writing on it, but it's not -- I don't
 25 know what it is, and I'm not going to

Stephen Czarnik 3/27/2008 9:00:00 AM

161

1 S. Czarnik
 2 testify about it, but that's what I see.
 3 MR. HENDERSON: Does it say where
 4 the fax -- is the fax cover sheet
 5 identifiable?
 6 MS. GERSTMAN: There is no fax
 7 cover sheet. It's a single-page
 8 document.
 9 MR. CRAINE: It's got 972-731-4338,
 10 December 10, 2007, 1:13 p.m. on the fax
 11 top, and then it's Bates labeled
 12 Reynolds 71
 13 MR. HENDERSON: Could you also
 14 describe the five entries on that
 15 document?
 16 MR. CRAINE: Do you want me to read
 17 this for you, Randy?
 18 MR. HENDERSON: Yes, please,
 19 Patrick.
 20 MR. CRAINE: Shell STS, \$150,000.
 21 STS bridge loan, \$175,000. Beverage
 22 Creations loan, \$50,000. Czarnik,
 23 \$20,000. ALMY funding, \$210,000.
 24 Total, \$605,000. 201,656/EA. Each
 25 needs to write a check for \$70,000 to

162

1 S. Czarnik
 2 Alchemy Creative, Inc. Both Wynn
 3 Industries and Ballatalia each need to
 4 write a check to Thomas Wade
 5 Investments, LLC, for \$131,666.
 6 MS. ALTENBAUMER-PRICE: Thank you,
 7 Patrick. Now I know what document
 8 you're talking about.
 9 Q. Mr. Czarnik, do any of these other
 10 entries on this document mean anything to
 11 you?
 12 A. STS means something to me.
 13 Q. What is STS?
 14 A. STS is a private company that they
 15 wanted to do a transaction with.
 16 Q. Is that Strategic Tracking
 17 Solutions?
 18 A. That's correct.
 19 Q. And who wanted to do a private
 20 transaction?
 21 A. Carl.
 22 Q. Anybody else?
 23 A. I don't know.
 24 Q. Was that transaction one?
 25 A. No.

163

1 S. Czarnik
 2 Q. Is that something pending, in the
 3 works?
 4 A. No. I don't know from their
 5 perspective. From mine, no.
 6 Q. Are you familiar with a stock by
 7 the name of Connect A Jet?
 8 A. I am.
 9 Q. How are you familiar with Connect A
 10 Jet?
 11 A. I saw an article regarding Jason
 12 Wynn and Connect A Jet.
 13 Q. When did you see that?
 14 A. Probably January.
 15 Q. What was the -- I'm sorry. Did I
 16 cut you off? I'm sorry.
 17 A. Yeah. And I saw a commercial on
 18 MSNBC for it as well.
 19 Q. What did the article say about
 20 Jason Wynn?
 21 A. That he was a stock promoter that
 22 was involved in Connect A Jet.
 23 Q. Was it a favorable or unfavorable
 24 article?
 25 A. I would say it was fairly

164

1 S. Czarnik
 2 unfavorable.
 3 Q. How did that come to your
 4 attention, that article?
 5 A. Someone had sent it to me, but I
 6 don't recall who sent it to me. It could
 7 have been -- we talked about this before. It
 8 could have been Anthony Christmas or Robert
 9 Feedback.
 10 Q. And that was in January of '08?
 11 A. Yeah.
 12 Q. Were you aware that the SEC
 13 suspended trading in the securities of
 14 Connect A Jet on October 1st, 2007?
 15 A. I don't know that I was aware of
 16 it. I'm certainly aware of it now. I was
 17 probably aware of it in January, but I don't
 18 know if I was aware of it when it -- if it
 19 happened that long ago.
 20 Q. Did you know that Jason Wynn
 21 through Wynn Holdings and Ryan Reynolds
 22 through another one of his entities were 504
 23 recipients of Connect A Jet stock?
 24 A. No.
 25 Q. Did you ever know that?

Stephen Czarnik 3/27/2008 9:00:00 AM

165

1 S. Czarnik
 2 A. No. Not until now.
 3 Q. Is Summit Capital Partners a
 4 client?
 5 A. No.
 6 Q. Has it ever been?
 7 A. No.
 8 Q. Have you ever received any money or
 9 stock from Summit?
 10 A. No.
 11 Q. Is Lynn Thomas Group a client?
 12 A. I mean Carl Fleming I would
 13 consider a client, and that's his -- a
 14 company that I believe is wholly owned by
 15 him, so I don't know how that works. I
 16 mean...
 17 MR. PICKHOLZ: Take a break?
 18 MS. GERSTMAN: Off the record.
 19 (Recess taken from 2:52 p.m. to
 20 2:54 p.m.)
 21 MR. PICKHOLZ: Our understanding is
 22 that Stephen represented Fleming but not
 23 his company, the Lynn Thomas Group or
 24 whatever. Is that your understanding?
 25 My understanding is that Stephen

166

1 S. Czarnik
 2 represented Fleming but not the company,
 3 this Lynn Thomas Group that was in his
 4 last answer, but I just want to find out
 5 from Fleming's counsel if that's their
 6 understanding.
 7 MR. CRAINE: My understanding was
 8 that he represented both, and I would be
 9 willing to sit and talk about that
 10 later, but just in the conversations
 11 I've had, my understanding before coming
 12 here was that he had given advice to
 13 both.
 14 MR. PICKHOLZ: Okay. Are you going
 15 to assert attorney client --
 16 MR. CRAINE: I will on an abundance
 17 of caution and we can --
 18 MR. PICKHOLZ: Okay. In that case
 19 we'll do it the same way we did before
 20 where if the conversation was you were
 21 representing BCI and getting information
 22 from him and you weren't acting as his
 23 attorney or attorney for I guess a
 24 company of his, then you can answer the
 25 question substantively. If you're

167

1 S. Czarnik
 2 acting as his lawyer or I guess his
 3 counsel will mention it if it's one of
 4 the companies, then you can assert an
 5 attorney client privilege objection, in
 6 which case we will honor the objection
 7 and let you guys fight it out and then
 8 tell us what the judge says.
 9 THE WITNESS: I mean the company,
 10 if it's one --
 11 MR. PICKHOLZ: Don't ask me a
 12 question. I'm not being deposed here to
 13 ask questions.
 14 THE WITNESS: Okay. I'm sorry.
 15 Q. What did the Lynn Thomas Group do,
 16 if anything, in connection with this BCI
 17 offering?
 18 A. I think that --
 19 MR. CRAINE: And this is where
 20 we're getting -- I'm trying to figure
 21 out a way for you to get what you want
 22 without stepping into bounds where we're
 23 outside of it. If you can restrict it
 24 just to BCI, kind of what actions it
 25 took, we'll let do you that.

168

1 S. Czarnik
 2 A. From my understanding, it paid
 3 money to the company as well as to the -- my
 4 understanding is they paid for the shell as
 5 well, at least partial.
 6 Q. When you say paid money to the
 7 company, what do you mean?
 8 A. I believe that actual money went in
 9 the company for the notes.
 10 Q. That Lynn Thomas Group funded the
 11 notes that --
 12 A. Oh, I'm sorry. My mistake. The
 13 notes are Thomas Wade. Then my answer is I
 14 don't think Lynn Thomas did anything.
 15 MR. CRAINE: That's more what I
 16 expected.
 17 THE WITNESS: Yeah. Sorry.
 18 MR. CRAINE: No problem.
 19 Q. And not that they paid for the
 20 shell then either, that was not --
 21 A. No. They did absolutely nothing.
 22 I was confusing Thomas Wade with Lynn Thomas.
 23 Q. Okay. So let me ask it again just
 24 to be clear. What did Lynn Thomas Group do
 25 in connection with the BCI offering?

Stephen Czarnik 3/27/2008 9:00:00 AM

169

1 S. Czarnik
 2 A. My understanding is nothing.
 3 Q. Have you ever received any
 4 compensation or payments or anything of value
 5 from Ryan Reynolds?
 6 A. Nothing.
 7 Q. Bellatalla?
 8 A. No.
 9 Q. Jason Wynn?
 10 A. No.
 11 Q. Wynn Industries?
 12 A. No.
 13 Q. Thomas Wade?
 14 A. I'm not sure who paid me the funds,
 15 whether it came from Mr. Fleming, Thomas
 16 Wade, Lynn Thomas, or whoever else. But
 17 otherwise no.
 18 Q. So aside from the \$10,000, or the
 19 20,000 as we saw represented on Exhibit 29,
 20 any other payments or items of value,
 21 anything of value from Thomas Wade or Carlton
 22 Fleming?
 23 A. Yeah. There was other things we
 24 worked on that I was paid for, but with
 25 respect to this transaction, no.

170

1 S. Czarnik
 2 Q. And any payments you received from
 3 Thomas Wade and Carlton Fleming, were those
 4 in exchange for legal services?
 5 A. Yes.
 6 Q. Do you have any knowledge that
 7 these notes, knowledge or information that
 8 these notes and the 504 offering was part of
 9 a plan to take BCI public?
 10 A. I don't really understand the
 11 question.
 12 Q. Did anything ever come to your
 13 attention from the time you were retained by
 14 BCI going forward that the series of
 15 transactions that we've looked at, the notes,
 16 the 504 offering, was all part of a larger
 17 plan to get stock into the public market to
 18 have a public float for BCI?
 19 MR. PICKHOLZ: Do you understand
 20 the question?
 21 THE WITNESS: No, I don't.
 22 MR. PICKHOLZ: Do you need her to
 23 break it down or rephrase it, or do you
 24 understand it?
 25 A. I don't really understand it. I

171

1 S. Czarnik
 2 don't understand -- I'm sorry. I don't
 3 understand it.
 4 Q. Okay. We've been looking at a
 5 private transaction, the 504 private stock
 6 transaction. Do you have any information or
 7 knowledge whatsoever that that was part of a
 8 larger plan, one step or, you know, some
 9 smaller part of a larger plan to take BCI
 10 public, to make it a public company with a
 11 public float, to get these shares, these 504
 12 shares into the public? Let me put it that
 13 way. Maybe that's better. Do you have any
 14 knowledge or information about a larger plan
 15 to get these 504 shares into the public
 16 market?
 17 A. No, other than doing a shell
 18 transaction in and of itself makes it a
 19 public company. So that -- it was the plan.
 20 It's a public company now once the
 21 transaction was consummated.
 22 Q. And the shares were --
 23 MR. CRAINE: And I'll object as
 24 non-responsive there. You can go ahead.
 25 Q. And the shares were freely tradable

172

1 S. Czarnik
 2 from the 504 offering?
 3 A. The shares were freely tradable
 4 from the 504 offering.
 5 Q. Ever know anyone to refer to this
 6 process, this series of transactions, again
 7 I'm talking about what you know and saw and
 8 did with respect to BCI, ever know anyone to
 9 refer to this process as taking a company
 10 public?
 11 MR. PICKHOLZ: Can I have the
 12 question read back.
 13 (Record read.)
 14 MR. PICKHOLZ: I have to object. I
 15 don't know what you mean by this process
 16 and all these -- it's just unclear to me
 17 what you're referring to. You mentioned
 18 a bunch of things in the question.
 19 MS. GERSTMAN: Okay. I'll try to
 20 rephrase it.
 21 Q. With respect to the 504 offering
 22 and what you know to have happened with
 23 respect to BCI stock, in connection with
 24 that, have you ever heard anyone referring to
 25 what they were doing with BCI stock as taking

Stephen Czarnik 3/27/2008 9:00:00 AM

173

1 S. Czarnik
 2 BCI public?
 3 A. You mean --
 4 MR. PICKHOLZ: Are you referring to
 5 the series of activities that he
 6 undertook himself, or are you expanding
 7 that to include some of these other
 8 things that we're now learning some
 9 other people have engaged in that are in
 10 the complaint? I mean are you
 11 encompassing everything here or just --
 12 MS. GERSTMAN: No?
 13 MR. PICKHOLZ: -- what he did?
 14 MS. GERSTMAN: No.
 15 MR. PICKHOLZ: That's what's
 16 confusing.
 17 Q. I'm talking about the 504 offering,
 18 okay, and the issuance of unrestricted stock.
 19 Did you ever hear anybody talk about that as
 20 a process of taking BCI public?
 21 A. I'm not sure if I have or not.
 22 Q. Did you know that Mr. Fleming had
 23 spent around \$800,000 in prepaid marketing
 24 expenses for BCI?
 25 A. Pardon?

174

1 S. Czarnik
 2 Q. Do you know whether Mr. Fleming had
 3 spent around \$800,000 in prepaid marketing
 4 expenses for BCI?
 5 A. No idea.
 6 Q. Have you ever had any
 7 communications with anybody at Belmont
 8 Partners?
 9 A. Yes.
 10 Q. What communications have you had
 11 with Belmont Partners?
 12 A. Several. I mean I know Joe Meuse
 13 there.
 14 Q. Okay. You've testified to one, so
 15 let's put that aside. Aside from that. And
 16 let's say subsequent to the closing to the
 17 August 30th, '07, transaction, what
 18 communications did you have with Belmont
 19 Partners?
 20 A. With respect to BCI?
 21 Q. Yes.
 22 A. My recollection is only the one
 23 call about the volume.
 24 Q. You don't remember any other calls
 25 with anyone at Belmont Partners?

175

1 S. Czarnik
 2 A. Not with respect to BCI. I don't
 3 recall any. I mean I'm not sure, but I don't
 4 recall.
 5 Q. Have your services to BCI at all
 6 involved filing Registration A statements?
 7 A. It was talked about that we would
 8 do a Reg A offering.
 9 Q. Who talked about that?
 10 A. Me.
 11 Q. With whom?
 12 A. With Robert Feeback, Patrick Dado,
 13 and Bob Woden.
 14 Q. When did you have those
 15 discussions?
 16 A. I'm not sure. January, February.
 17 Q. After the 504 offering that we've
 18 been talking about?
 19 A. It may have been before. It may
 20 have been in December. But I don't recall
 21 the exact timing of it.
 22 Q. Was this related to a separate
 23 offering by BCI?
 24 A. Yes.
 25 MS. GERSTMAN: You want to just

176

1 S. Czarnik
 2 give me a minute. I think I might
 3 actually be at the end.
 4 Q. Oh, would you like to add
 5 something?
 6 A. I need to add something. I did
 7 have a conversation with Mr. Meuse of
 8 Belmont, and he referred me to Jason.
 9 Q. Was there anything else substantive
 10 on that conversation?
 11 A. Nothing.
 12 MS. GERSTMAN: I have nothing
 13 further. Counsel?
 14 MR. PICKHOLZ: Can I take one
 15 minute?
 16 MS. GERSTMAN: Yes.
 17 (Recess taken from 3:07 p.m. to
 18 3:12 p.m.)
 19 EXAMINATION BY
 20 MR. HENDERSON:
 21 Q. Mr. Czarnik, you mentioned my name,
 22 and we didn't visit, and we didn't get to see
 23 each other, so I guess we have the SEC to
 24 thank for this introduction, unpleasant as it
 25 can be.

Stephen Czarnik 3/27/2008 9:00:00 AM

177

1 S. Czarnik
 2 I want to go into a little bit of
 3 background and your representation of some of
 4 these companies that we've talked about
 5 today. I think you testified earlier that
 6 maybe somewhere between 20 and 50 504s were
 7 done over past two years. Is that accurate?
 8 A. I said -- I didn't give a specific
 9 number.
 10 Q. Okay. It was maybe more than 20?
 11 A. Yeah.
 12 Q. And in each one of those was the
 13 fee paid only in cash, I mean by check or
 14 wire, or did you receive stock in those
 15 offerings at all?
 16 A. I've never received stock in a 504
 17 offering.
 18 Q. And these 504s, were there other
 19 states' exemptions relied upon other than
 20 Texas?
 21 A. Until -- I don't remember the date,
 22 I don't know if it was August 1st or
 23 August 31st, I think Minnesota was available
 24 as well, but they changed the law in
 25 Minnesota.

178

1 S. Czarnik
 2 Q. That's my understanding also. All
 3 right. So your prior opinions would have
 4 been relying on Texas and Minnesota
 5 exemptions as they were available at the
 6 time?
 7 A. If it was appropriate.
 8 Q. Did I understand you to say that
 9 with respect to the BCI transaction, there
 10 was no engagement letter with respect to your
 11 services that would be performed; is that
 12 correct?
 13 A. That is correct.
 14 Q. Could you tell me what you believed
 15 your services would be within the confines of
 16 that engagement for which I believe you were
 17 paid \$10,000?
 18 A. My understanding was the purchase
 19 of the shell, the combination of the
 20 entities, which we'll call the share exchange
 21 agreement, and then the offering.
 22 Q. All right. Thank you. And let's
 23 just go back to My Vintage Baby and Alchemy
 24 Creative, because those were two that you
 25 specifically identified in response to

179

1 S. Czarnik
 2 questions from SEC counsel. Do you recall
 3 with My Vintage Baby, was that also an oral
 4 engagement letter with My Vintage Baby?
 5 A. I don't recall if it was an oral
 6 engagement letter with My Vintage Baby or
 7 not.
 8 Q. Can you describe briefly what your
 9 services were, what you performed for My
 10 Vintage Baby?
 11 MR. PICKHOLZ: To the extent you
 12 can do that without revealing any
 13 attorney client communications and work
 14 product with your client.
 15 MR. HENDERSON: No, just a
 16 description, just a description like he
 17 just stated. Did he get involved in the
 18 acquisition of the shell, combination,
 19 and then the offering. I mean that's
 20 all I'm asking.
 21 MR. PICKHOLZ: Okay.
 22 A. I did the acquisition of the shell,
 23 the combination agreement, the offering, and
 24 we did a draft of a Regulation A offering
 25 statement.

180

1 S. Czarnik
 2 Q. All right. A draft of the Reg A
 3 statement. The Reg A offering never became
 4 effective, did it?
 5 A. No, it didn't become effective, to
 6 my understanding.
 7 Q. You testified earlier that I guess
 8 sometime in February or early March you
 9 became aware of the volume of trades and the
 10 promotion relating to BCI, it sort of set off
 11 some alarms. Am I characterizing that
 12 correctly?
 13 A. Yeah, except it was the first week
 14 of February.
 15 Q. Okay. That's fine. So that would
 16 be the first week of February. So let's go
 17 back, and let's take My Vintage Baby first.
 18 In connection with My Vintage Baby, after you
 19 had issued your opinion and essentially
 20 completed your obligations under your
 21 arrangement, did you have any opportunity to
 22 on your own review volume amounts, press
 23 releases that became public, or any sort of
 24 marketing material put out by Wynn Industries
 25 or anyone else?

Stephen Czarnik 3/27/2008 9:00:00 AM

181

1 S. Czarnik
 2 MR. PICKHOLZ: Can you break that
 3 down a little bit.
 4 MR. HENDERSON: Okay. Let's break
 5 it down. His testimony was that he
 6 became aware in the first week of
 7 February, because of volume and
 8 promotion activity of BCI, he kind of
 9 became concerned, all right. I hope I'm
 10 stating that correctly. I'm asking the
 11 same question with respect to My Vintage
 12 Baby first. Did he have an occasion
 13 after his engagement was complete with
 14 respect to My Vintage Baby, which would
 15 have been the completion of the
 16 offering, did he have occasion to look
 17 into volume and/or promotional activity
 18 with respect to My Vintage Baby as he
 19 did with BCI.
 20 MR. PICKHOLZ: If you understand,
 21 you can answer it.
 22 A. I understand your question to be is
 23 did I look at post offering My Vintage Baby
 24 like I looked at post offering Beverage
 25 Creations.

182

1 S. Czarnik
 2 Q. Yes, sir.
 3 A. And the answer is I don't recall
 4 that I did or I didn't. That was a year ago.
 5 But I do know that with respect to Beverage
 6 Creations and when my engagement was
 7 effectively -- my services were over, someone
 8 called me, as I testified to.
 9 Q. Yes. No one called you with
 10 respect to your recollection on My Vintage
 11 Baby or Alchemy Creations?
 12 A. That's correct. That's correct.
 13 Q. All right. Could you tell me again
 14 who called you regarding BCI?
 15 A. Joe Meuse.
 16 Q. Joe Meuse. And was Joe Meuse a
 17 client of yours?
 18 A. No.
 19 Q. What did Mr. Meuse tell you at that
 20 time in that conversation?
 21 A. That the trading volume was
 22 enormous and there is no public information
 23 out with respect to the company.
 24 Q. So let's go back. Do you recall
 25 approximately what week whether in January or

183

1 S. Czarnik
 2 February with respect to when the trading
 3 began in BCI?
 4 A. I don't recall.
 5 Q. So you don't recall. You think you
 6 got this call from Mr. Meuse in the first
 7 week of February?
 8 A. I'm certain of that, because I was
 9 on vacation. It was my first vacation in a
 10 number of years.
 11 Q. And I see as far as documents that
 12 we have that have been mentioned before, I
 13 have a letter dated December 17th, '07, to
 14 PacWest Transfer, which, in effect, says it's
 15 okay -- correct me if I'm paraphrasing wrong,
 16 it's okay to go ahead and issue these
 17 tranches of shares to the three entities
 18 mentioned in there without a restricted
 19 legend.
 20 My question is, can you approximate
 21 for us after December 17th and prior to the
 22 first week in February, could you in any way
 23 kind of narrow when the trading in BCI began?
 24 A. I don't know as I'm sitting here,
 25 but I know that you could easily find out.

184

1 S. Czarnik
 2 Q. But you don't recall right now?
 3 A. No.
 4 Q. Now, I believe you testified that
 5 with respect to BCI, BCI was your client in
 6 this offering which is the subject of this
 7 deposition; is that correct?
 8 A. Correct.
 9 Q. And the payment of the \$10,000, did
 10 it come directly from BCI?
 11 A. No.
 12 Q. It did not. From whom did the
 13 \$10,000 payment come?
 14 A. It came from either Carl Fleming,
 15 Lynn Thomas, or another entity controlled by
 16 Carl, controlled or owned by Carl. I'm not
 17 sure where it came from.
 18 Q. At the time that you received that
 19 \$10,000 fee, and I'm assuming it was on
 20 behalf of BCI?
 21 A. Yes. That's my assumption as well.
 22 Q. All right. Then at the time was
 23 Thomas Wade, Mr. Fleming, or Lynn Thomas a
 24 client of yours?
 25 A. I don't know that he was a client

Stephen Czarnik 3/27/2008 9:00:00 AM

185

1 S. Czarnik
 2 of mine, but I certainly know that there has
 3 been occasion that I've given Carl advice.
 4 Q. So he may have been a client of
 5 yours prior to the time that you had the
 6 arrangement with BCI and received the
 7 \$10,000, he may have been a client with you?
 8 That's all I'm trying to establish. Is that
 9 correct?
 10 A. I don't understand what you're
 11 trying to establish, I mean, or say.
 12 Q. I'm just asking you that prior to
 13 receipt of the \$10,000 to do the BCI
 14 offering, had Mr. Fleming or any of the
 15 entities that he controlled sought your
 16 advice of any legal nature for which he paid
 17 you compensation for your services?
 18 A. I received -- Mr. Fleming or the
 19 companies that he controls sent me funds,
 20 payment for services, legal services.
 21 Q. Prior to the one we're talking
 22 about now, is that correct?
 23 A. That's correct.
 24 Q. But not related to BCI?
 25 A. Correct.

186

1 S. Czarnik
 2 Q. I'm just curious, and I'm not going
 3 to ask you, I'm just going to -- ask you
 4 about contents. Did you discuss with anyone
 5 about a potential waiver of conflict?
 6 A. I discussed with Feedback that --
 7 Q. Did Mr. Feedback, who I believe you
 8 testified was not a client --
 9 MR. CRAINE: One moment here. He
 10 was a board member of BCI.
 11 Q. He was a board member, so he would
 12 have been representing BCI in these
 13 conversations?
 14 A. That's my understanding, yes.
 15 Q. Was a waiver of conflict letter or
 16 memo or advice memorialized between BCI and
 17 any of the Fleming-related entities?
 18 A. I don't believe that it was.
 19 Q. Do you consider the fee paid to you
 20 as a fee paid to you by BCI or by a Fleming
 21 entity?
 22 A. BCI.
 23 Q. Just a couple of other questions.
 24 Now, Mr. Meuse told you in the first week of
 25 February that we have a lot of activity and

187

1 S. Czarnik
 2 we don't have current financials. Did you
 3 understand at the time what he meant by or
 4 what you discovered were not, quote, current
 5 financials?
 6 A. I think Mr. Meuse told me that
 7 there was an enormous volume and we didn't
 8 have any public information, which, of
 9 course, would include current financials.
 10 Q. Let's go back to My Vantage Baby.
 11 At any time during your knowledge of My
 12 Vantage Baby during your representation and
 13 shortly after or at trading commencing in My
 14 Vantage Baby, do you know whether current
 15 financials were available for the public?
 16 A. I know that I assisted them with
 17 filing their current information on Pink
 18 Sheets.
 19 Q. That would have been My Vantage
 20 Baby?
 21 A. That's correct.
 22 Q. And pardon me if I'm repetitious,
 23 but do you recall your fee that was paid by
 24 or on behalf of My Vantage Baby, the amount
 25 of that fee?

188

1 S. Czarnik
 2 A. I don't recall.
 3 Q. In My Vantage Baby part of what
 4 services you rendered were to assist the
 5 company in posting current financial
 6 information with PinkSheets.com; is that
 7 correct?
 8 A. No. But I carried on to make sure
 9 that it was done.
 10 Q. You carried on to make sure it was
 11 done?
 12 A. That's correct.
 13 Q. Now, let's go forward to BCI and
 14 kind of explore the same sort of area. So
 15 you assisted the company in My Vantage Baby
 16 and you carried on to make sure it was done.
 17 Did you contemplate or was it discussed that
 18 you would perform essentially the same
 19 service with respect to BCI?
 20 A. I don't know. What service are you
 21 referring to?
 22 Q. I'm referring to what you said, I
 23 believe, quote, you assisted the company and
 24 saw through it that the financials were
 25 posted with PinkSheets.com on My Vantage

Stephen Czarnik 3/27/2008 9:00:00 AM

189

191

1 S. Czarnik
2 Baby, and I'm curious as to did you perform
3 those services with respect to BCI?
4 A. I did. I called the company when I
5 got the call from Meuse about the volume,
6 said we needed it done, we needed it
7 immediately posted, and the company sent me a
8 draft while I was on vacation, I reviewed the
9 draft, we went back and forth, and we got it
10 posted.
11 Q. All right. Well, then, let me go
12 back to My Vintage Baby again. Were the
13 financials on My Vintage Baby posted prior to
14 or on the first day of trading?
15 A. I don't know.
16 Q. So is it fair to say that the
17 financials for BCI were not posted prior to
18 or on the first day of trading?
19 A. I don't believe that they were.
20 Q. Is there any explanation as to why
21 the company did not request your assistance
22 in getting those financials posted prior to
23 or at first day of trading?
24 MR. PICKHOLZ: Don't speculate on
25 this, but if you know or have any reason

1 S. Czarnik
2 confirm that those numbers and that
3 information was posted by BCI?
4 A. I believe someone called me and
5 told me they were posted.
6 Q. Then let me ask you this.
7 MR. HENDERSON: And I don't know,
8 Linda, whether you have it available to
9 you but the Order of Suspension dated
10 March 12, 2008. Is that available to
11 anybody there?
12 MS. GERSTMAN: I do not have it.
13 You're talking about BCI?
14 MR. PICKHOLZ: On BCI.
15 MS. GERSTMAN: Yes, I don't have
16 it.
17 Q. Then let me just read, if I can.
18 "The Commission temporarily suspended trading
19 in the securities of BCI, ticker symbol BVRG,
20 because it appears that the market for BCI
21 securities may be reacting to manipulative
22 forces or deceptive practices and that there
23 is a lack of current and accurate public
24 information about BCI upon which an informed
25 investment decision can be made."

190

192

1 S. Czarnik
2 to have an answer, then you can answer
3 it.
4 A. My recollection is we were working
5 together throughout the course of a few weeks
6 to get it done. There just wasn't a sense of
7 urgency, didn't seem to be a sense of urgency
8 to it, and certainly -- that's with respect
9 to disclosure statement. And certainly with
10 respect to the financials, as an outside
11 lawyer engaged to -- and a specialist to do a
12 special set of transactions, I have no idea
13 what their financials would be. How could I
14 put them together?
15 Q. I'm not implying in any way,
16 Mr. Czarnik, that you would have a role in
17 putting them together. I'm just trying to
18 determine whether your activity as you
19 described what you did on behalf of My
20 Vintage Baby and posting current financial
21 information, did you perform similar
22 activities for BCI, and I think you testified
23 yes. Now, those were posted sometime -- you
24 were on vacation. You reviewed it.
25 Allegedly those were posted by BCI. Did you

1 S. Czarnik
2 Mr. Czarnik, can you reconcile your
3 belief and understanding of what the company
4 did with respect to posting this public
5 information and the allegations of the
6 Commission in the March 12th, 2008, order of
7 suspension?
8 MR. PICKHOLZ: Well, I guess before
9 I let him answer that, since you're on
10 the phone, obviously, you'll represent
11 to him that that's an accurate reading
12 of the document?
13 MR. HENDERSON: Absolutely. I'm
14 reading verbatim from the corrected
15 Securities Exchange Act of 1934, Release
16 Number 5748 March 12, 2008.
17 MR. PICKHOLZ: Okay. What he's
18 saying is he has the document in front
19 of him. He's making a representation
20 that he's read it accurately. And for
21 his question, you assume what he just,
22 you know, if what he just read is
23 accurate and what he just said is
24 accurate, that's the predicate for your
25 answer. Okay? Do you understand?

Stephen Czarnik 3/27/2008 9:00:00 AM

193

195

1 S. Czarnik
 2 Because we don't have it in front of us
 3 to look at it ourselves
 4 THE WITNESS: I understand that,
 5 but now I don't understand the question
 6 Q. Okay. The question is that you had
 7 the conversation with Mr. Meuse. You did
 8 follow up. The public information was
 9 published and made available to the investing
 10 public. And then approximately a month
 11 later, four or five weeks later the SEC comes
 12 out and says, in effect, there is a lack of
 13 current and accurate public information about
 14 BCI upon which an informed investment
 15 decision can be made. I'm wondering based on
 16 that Order of Suspension, and I've read it to
 17 you accurately, can you reconcile the
 18 Commission's allegations with what you know
 19 that the company did with respect to
 20 publishing public information?
 21 MS. GERSTMAN: I object to the form
 22 of the question. You can answer,
 23 though
 24 A. I don't -- my answer is I can't
 25 reconcile it because I don't know. Perhaps

1 S. Czarnik
 2 marked it. Do you remember the number
 3 on it?
 4 MR. HENDERSON: Hold on. We're
 5 looking. Kara has a log
 6 MS. GERSTMAN: Or do you have a
 7 Bates range on it?
 8 MR. HENDERSON: Not on the one you
 9 provided us.
 10 MS. ALTENBAUMER-PRICE: I believe
 11 it is Exhibit 24
 12 MR. HENDERSON: It's going to be a
 13 letter dated December 17th to PacWest
 14 MR. PICKHOLZ: From who?
 15 THE WITNESS: From Stephen Czarnik?
 16 MR. HENDERSON: From Cohen &
 17 Czarnik.
 18 MR. PICKHOLZ: Yes. That's 24
 19 MR. HENDERSON: Okay. We're all on
 20 the same exhibit?
 21 MR. PICKHOLZ: Yes.
 22 Q. So you just testified, Mr. Czarnik,
 23 that this letter is intended to inform and
 24 give comfort I'm assuming to the transfer
 25 agent that the transfer agent may issue these

194

196

1 S. Czarnik
 2 the information that the company provided
 3 within the disclosure information statement
 4 posted on Pink Sheets or their financials
 5 were incorrect. Maybe they were material
 6 misstatements. I have no way of knowing.
 7 Q. Okay. That's a very fair
 8 statement. Just a couple more questions and
 9 I'll be through with you.
 10 Is it fair to say that the purpose
 11 of the letter dated December 17, 2007, issued
 12 to PacWest Transfer, and I believe it's an
 13 exhibit there that can be put in front of
 14 you, could you explain to me the purpose of
 15 this letter to PacWest Transfer?
 16 A. I believe the purpose of the letter
 17 is for the benefit of the transfer agent so
 18 the transfer agent can issue a stock
 19 certificate without restrictive legends.
 20 MR. PICKHOLZ: Just so you know,
 21 I've put in front of him Exhibit 24,
 22 which I believe is the letter you're
 23 referring to
 24 MR. HENDERSON: That's great
 25 MS. GERSTMAN: Wait, Randy. We

1 S. Czarnik
 2 shares as identified and stated and in the
 3 amounts and to the transferees without
 4 restrictive legends; is that correct?
 5 A. That's correct. I mean I'm not an
 6 expert, by no means, but there may be rules
 7 that transfer agents have to go by and they
 8 require this letter
 9 Q. All right. Then let me follow up
 10 on that. The subscription agreements for I
 11 believe Wynn Industries and for Bellatalla,
 12 they are attached to my copy of your opinion
 13 letter. And I believe they've been
 14 discussed, but I think it's clear that there
 15 have been some -- that there are
 16 representations in here that these are not
 17 going to be transferred, whether the
 18 representations came from the company or
 19 whether representations came from the
 20 transferees, but that these were taken for
 21 investment purposes. And I guess my question
 22 is, one has shares without restricted legends
 23 issued to them, and I ask you what would be
 24 the purpose of issuing shares without a
 25 restricted legend in the context of your

Stephen Czarnik 3/27/2008 9:00:00 AM

197

199

1 S. Czarnik
2 opinion and this offering?
3 A. What would be the purpose of --
4 Q. Let me ask it this way. There is a
5 subscription agreement that contains
6 investment representations, and I believe in
7 reading your letter you received certain
8 certifications or representations from BCI
9 that these shares were going to be held for
10 investment purposes, that is, not sold two,
11 three days after trading started. And so my
12 question is, we have those representations by
13 the transferee. We have the representations
14 by the company. Then if those are, in fact,
15 their representations and their agreements,
16 why would shares be issued to the transferees
17 without restricted legends and without some
18 sort of reference back to their subscription
19 agreement?
20 MR. CRANE: Objection. Form. Go
21 ahead.
22 A. Well, because if they were issued
23 with a restrictive legend, in order to remove
24 the restriction, you would have to rely on
25 another exemption such as 144 was my

1 S. Czarnik
2 object, too. I'm not sure he's
3 qualified to give an opinion on what it
4 is that brokerage firms do or don't do
5 to satisfy their own compliance or other
6 obligations
7 MR. HENDERSON: I'm asking him if
8 he is just aware of what brokerage firms
9 do when they receive shares under these
10 circumstances.
11 MR. PICKHOLZ: All firms, any
12 firms?
13 MR. HENDERSON: Brokerage firms
14 MR. PICKHOLZ: Yeah, but there's a
15 lot of brokerage firms. I assume they
16 have different procedures. I mean if
17 there is one involved here, if you want
18 to ask him if he knows what that firm
19 does, but I'm not sure he can actually
20 -- all right. My objection is just it's
21 vague and overbroad. If you can
22 understand it and you can answer it, go
23 ahead.
24 MS. GERSTMAN: Same objection.
25 Q. Mr. Czarnik, are you aware of where

198

200

1 S. Czarnik
2 understanding. So in this case they wouldn't
3 have to do -- they wouldn't have to do such a
4 thing, go back for a legal opinion. But I
5 mean I think that's -- that would make sense.
6 Q. All right. That's a fair answer.
7 And now I'm going to ask you of your
8 knowledge, and please don't speculate, I'm
9 making an assumption that the transferees
10 identified in your December 17th, 2007,
11 letter either were issued the shares without
12 -- the certificates without a restricted
13 legend or they were electronically
14 transferred to an account designated by the
15 transferees without a restricted notation on
16 them. That's my assumption based on the
17 purpose of the letter, and, in fact, we know
18 that the shares were issued without a
19 restricted legend. Do you have any knowledge
20 of what brokerage firms do in order to assure
21 themselves that securities that they receive
22 for the benefit of a customer are free
23 trading upon receipt?
24 MS. GERSTMAN: Object to the form.
25 MR. PICKHOLZ: Yeah, I'm going to

1 S. Czarnik
2 these shares were transferred, I mean
3 specifically do you know which brokerage
4 firms, if any, these shares were transferred
5 pursuant to your letter?
6 A. I would have to look at -- one of
7 the exhibits was a letter from the company to
8 the transfer agent, and I can only assume
9 that that's where the shares were delivered
10 to.
11 Q. Has that letter been introduced
12 before?
13 MS. GERSTMAN: Yes. We don't know
14 what number it is.
15 MR. PICKHOLZ: Let me see if I can
16 find it. 23, I think.
17 MS. ALTENBAUMER-PRICE: Exhibit 23
18 MS. GERSTMAN: Yes. You should
19 look at the marked exhibit, Mr. Czarnik,
20 that's got 23 on it.
21 MR. PICKHOLZ: Let's take the real
22 one and I'll take these back because
23 these are my copies.
24 THE WITNESS: Okay. 23.
25 MS. GERSTMAN: He's got it, Randy.

Stephen Czarnik 3/27/2008 9:00:00 AM

201

1 S. Czarnik
 2 What's your question?
 3 Q Since I don't have it in front of
 4 me, to whom is the letter addressed?
 5 A PacWest Transfer.
 6 Q And it is signed by whom on behalf
 7 of whom?
 8 A Signed by Bob Wieden on behalf of
 9 Beverage Creations
 10 Q Now, since I don't have the
 11 exhibit, could you generally describe for me
 12 the purpose of this letter?
 13 A. It's an instruction letter to the
 14 transfer agent instructing the transfer agent
 15 to issue the shares.
 16 Q. In that letter does it -- I'm
 17 assuming it says to whom. Other than that,
 18 does it give any transfer directions as to
 19 brokerage accounts, brokerage firms?
 20 A. It says Faganson & Company
 21 Q. All right Faganson & Company. Is
 22 there anywhere in the letter from the company
 23 that advises Faganson & Company that these
 24 are pursuant to a 504 offering and/or
 25 subscription agreements whereby the

202

1 S. Czarnik
 2 transferees have agreed not to immediately
 3 resell their shares? And I'll give you some
 4 time to look through the instruction letter.
 5 MS. GERSTMAN: You know, I'm going
 6 to object to the form.
 7 MR. PICKHOLZ Do you understand
 8 it?
 9 A I don't understand I'm sorry.
 10 Q The letter which I'm sorry, but we
 11 don't have What I'm saying is if you look
 12 at that letter, it's an instructions to
 13 PacWest. Now, in these instructions to
 14 PacWest, it instructs them to transfer these
 15 shares to Faganson & Company Are there any
 16 other qualifications or conditions with
 17 respect to what PacWest should do with
 18 respect to these shares being transferred to
 19 Faganson & Company? Just look at the letter.
 20 A. They're supposed to forward them,
 21 the share certificate, directly to the
 22 broker.
 23 Q. Anything else?
 24 A. Issue the share without restrictive
 25 legend.

203

1 S. Czarnik
 2 Q Okay. Without restrictive legend,
 3 and then transfer those to the account at
 4 Faganson. Is that a fair leap?
 5 A. Yeah That's what the letter
 6 purports to say
 7 Q So what we have here is a company
 8 who has instructed, pursuant to your letter,
 9 which was artfully drafted, and the company
 10 then instructs the transfer agent to transfer
 11 those shares without restricted legend,
 12 without any other qualification, without any
 13 of the other references to any type of
 14 restrictions at all, any other restrictions,
 15 any other qualifications, I'm sorry, or
 16 conditions are not spelled out in that letter
 17 that you're looking at?
 18 MS. GERSTMAN: Object to the form
 19 Q Is without restrictions the only
 20 instructions given?
 21 MS. GERSTMAN Object to the form.
 22 A. My understanding is that's the only
 23 instructions that were given. I'm not sure
 24 if a broker dealer requested the copy of the
 25 legal opinion from the transfer agent or what

204

1 S. Czarnik
 2 information they had at their disposal.
 3 Q. Had you dealt with PacWest Transfer
 4 before the BCI transaction?
 5 A. Yes
 6 Q. Do you know any of the principals
 7 there?
 8 A. Well, I'm not certain, but I
 9 believe that Joe Mouse owns PacWest or has an
 10 ownership interest.
 11 Q Could you approximate, then, for us
 12 with respect to 504 offerings you've dealt
 13 with, approximately in some range of how many
 14 of these issues PacWest has handled?
 15 A I don't know how many -- what
 16 PacWest has done. I don't work for them
 17 Q. I know, but I'm asking you this
 18 You know for a fact that PacWest was a
 19 transfer agent on BCI; correct?
 20 A. Correct
 21 Q Was PacWest the transfer agent on
 22 My Vintage Baby?
 23 A. It was, yes.
 24 Q Was PacWest Transfer the transfer
 25 agent on Alchemy Creative?

Stephen Czarnik 3/27/2008 9:00:00 AM

205

1 S. Czarnik
 2 A. I don't know that it was. I'm not
 3 certain.
 4 Q. So at least you had some prior
 5 experience with PacWest in delivering an
 6 opinion letter?
 7 A. Yes.
 8 Q. One other question, sir. Was there
 9 an opinion letter issued by you to the
 10 company as a predicate for the letter that
 11 you issued to PacWest Transfer and the letter
 12 that the company issued to PacWest Transfer?
 13 Was there an opinion delivered to the company
 14 as a predicate to these two instruction
 15 letters?
 16 A. Are you asking if I did another
 17 opinion and directed it at the company?
 18 Q. Yes, sir.
 19 A. No.
 20 MR. HENDERSON: I'll pass the
 21 witness.
 22 MS. GERSTMAN: Anyone else? No?
 23 Going, going. Anyone else asking
 24 questions? Okay. I think we're
 25 concluded.

206

1 S. Czarnik
 2 COURT REPORTER: Is anybody on the
 3 phone ordering a copy of the transcript?
 4 MS. ALTENBAUMER-PRICE: Yes.
 5 COURT REPORTER: Regular delivery
 6 is eight to ten business days.
 7 MS. ALTENBAUMER-PRICE: No. We
 8 need it faster than that. Three days.
 9 Three business days.
 10 MS. GERSTMAN: Anybody else have
 11 anything to add from our people on the
 12 phone?
 13 MS. ALTENBAUMER-PRICE: Can you
 14 wait just one second. I may defer to
 15 Patrick on this comment. Patrick, do
 16 you have anything to add, or do I need
 17 to make a comment?
 18 MR. CRAINE: Feel free to make a
 19 comment.
 20 MS. ALTENBAUMER-PRICE: Okay.
 21 Because Mr. Czarnik has indicated that
 22 there are emails that he has not yet
 23 produced, and we presume there is a
 24 future production based on this
 25 deposition, we want to reserve our

207

1 S. Czarnik
 2 questions until after that production.
 3 So we would like to adjourn rather than
 4 conclude this deposition.
 5 MR. CRAINE: That's fine.
 6 MS. GERSTMAN: Fine.
 7 (Time noted: 4:50 p.m.)
 8
 9
 10
 11
 12
 13

STEPHEN CZARNIK

14 Subscribed and sworn to before me
 15 this ____ day of _____, 2008.
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

208

1
 2 CERTIFICATE
 3 STATE OF NEW YORK)
 4 : ss.
 5 COUNTY OF WESTCHESTER)
 6
 7 I, JOAN WARNOCK, a Notary Public
 8 within and for the State of New York, do
 9 hereby certify:
 10 That STEPHEN CZARNIK, the witness
 11 whose deposition is hereinbefore set
 12 forth, was duly sworn by me and that
 13 such deposition is a true record of the
 14 testimony given by the witness.
 15 I further certify that I am not
 16 related to any of the parties to this
 17 action by blood or marriage, and that I
 18 am in no way interested in the outcome
 19 of this matter.
 20 IN WITNESS WHEREOF, I have hereunto
 21 set my hand this 28th day of March,
 22 2008.
 23
 24
 25 JOAN WARNOCK

Stephen Czarnik 3/27/2008 9:00:00 AM

209

211

1		
2	INDEX	
3	WITNESS EXAMINATION BY	PAGE
4	Stephen Czarnik Ms. Gerstman	6
5	Mr. Henderson	176
6		
7	INFORMATION REQUESTS	
8	DIRECTIONS: 123, 126, 131	
9	RULINGS:	
10	TO BE FURNISHED:	
11	REQUESTS: 11, 26, 58, 74	
12	MOTIONS:	
13		
14	EXHIBITS	
15	PLAINTIFF'S FOR ID.	
16	EXHIBIT 6	6
17	Subpoena	
18	EXHIBIT 7	12
19	Letter dated March 25, 2008, to	
20	Jason Pickholz from Stanley Morris	
21	EXHIBIT 8	30
22	Convertible Note bearing production	
23	number SJC 00033-39	
24	EXHIBIT 9	30
25	Convertible Note bearing production	

210

212

1	
2	number SJC 00040-46
3	EXHIBIT 10 37
4	Convertible Note bearing production
5	number SJC 00047-53
6	EXHIBIT 11 37
7	Convertible Note bearing production
8	number SJC 00054-61
9	EXHIBIT 12 47
10	Conversion Notice bearing
11	production number SJC 00083-89
12	EXHIBIT 13 48
13	Convertible Note bearing production
14	number SJC 00082-68
15	EXHIBIT 14 50
16	Convertible Note bearing production
17	number SJC 00069-75
18	EXHIBIT 15 50
19	Convertible Note bearing production
20	number SJC 00076-82
21	EXHIBIT 16 54
22	Common Stock Purchase Agreement
23	bearing production number 00001-8
24	EXHIBIT 17 60
25	Entity Subscription Agreement

1	
2	Letter dated December 17, 2007,
3	bearing production number SJC
4	00090-92
5	EXHIBIT 25 146
6	Document dated December 17, 2007,
7	bearing production number APP
8	0070-72
9	EXHIBIT 26 149
10	Document bearing production number
11	SJC 00093-99
12	EXHIBIT 27 152
13	Document bearing production number
14	APP 0179-181
15	EXHIBIT 28 156
16	Three-page document bearing
17	production number Reynolds
18	000115-117
19	EXHIBIT 29 158
20	One-page document bearing
21	production number Reynolds 000071
22	
23	
24	
25	

